

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of the Secretary

In the Matter of:)
)
Petition of USTelecom For Forbearance) WC Docket No. 12-_____
Under 47 U.S.C. § 160(c) From Enforcement)
of Certain Legacy Telecommunications)
Regulations)

**PETITION FOR FORBEARANCE OF
THE UNITED STATES TELECOM ASSOCIATION**

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EXECUTIVE SUMMARY

The communications industry is in the midst of a paradigm shift, marked by the transition from the Public Switched Telephone Network to Internet-Protocol based networks. As broadband networks and the variety of applications they support displace traditional circuit-switched services, the Commission's rules must keep pace. Unfortunately, many of the Commission's rules were adopted in a different era, long before the advent of broadband networks or the creation of the public Internet.

The Commission recognized the need to modernize its rules when it recently adopted comprehensive reform of the universal service and intercarrier compensation systems. The Commission's reforms were premised upon the reality that these systems do not reflect today's communications marketplace and are poorly equipped to address the challenges associated with broadband networks. This reality is not limited to universal service and intercarrier compensation, and many of the Commission's legacy telecommunications regulations suffer from the same shortcomings.

Consistent with the Commission's commitment to eliminate unnecessary regulatory requirements, the United States Telecom Association files this Petition seeking forbearance from certain outdated legacy telecommunications regulations. The regulations that are the subject of USTelecom's Petition are vestiges of a bygone era – an era when telephone companies only offered circuit-switched services and consumers could only buy local voice service from their incumbent local exchange carrier. Some of the regulations from which USTelecom seeks forbearance are remnants of traditional rate-of-return regulation that continue to apply to companies operating under price cap regulation. Others reflect a regulatory artifact by which regulatory obligations are dependent upon whether a voice call travels across certain facilities.

What each of the rules identified in this Petition have in common, however, is that none has relevance in today's broadband world. These rules no longer serve any regulatory purpose, and there no longer exists any current federal need for these rules. Furthermore, the rules at issue are unnecessary to the Commission in performing its regulatory functions. Indeed, the Commission has granted forbearance to the largest incumbent carriers from compliance with certain rules that are the subject of USTelecom's Petition and identified other rules from which forbearance is being requested as being ripe for elimination. In fact, USTelecom's Petition includes a number of rules that were identified as no longer necessary in the Commission's latest Biennial Review report released just two months ago. And with some of these rules, the Commission already (and long ago) concluded that they were unnecessary, yet these rules persist.

Forbearance is warranted because the rules have been rendered obsolete by technological and market changes. From a technological standpoint, the Commission's legacy telecommunications regulations are ill-suited to facilitating, and in fact hamper, broadband deployment. Furthermore, these regulations apply solely to incumbent telecommunications carriers, even though incumbents now provide voice service to significantly less than half of American households. Indeed, the most recent survey by the Center for Disease Control (which has been relied upon previously by the Commission) has found that more than 32 percent of households have completely "cut the cord" and have abandoned their wireline phone altogether. *And at least one prominent industry analyst has projected that by the end of 2012, there will be more wireless-only households than the total number of households taking service from all incumbent providers combined.* At the same time, incumbent carriers compete against a host of providers, including cable companies that offer service to at least 93 percent of American

households, already serve approximately 20 percent of the residential voice market, and are the primary provider of residential broadband. Under these competitive circumstances, the current outdated regulatory regime imposes unnecessary costs on a limited subset of competitors to the detriment of these competitors and consumers alike.

Earlier this year, Chairman Genachowski committed to follow President Obama's directive to independent agencies by, among other things, undertaking an analysis of existing regulations and expeditiously eliminating those that are unnecessary or outdated. On November 7, 2011, the Commission released its plan for moving forward with the elimination of outmoded or counterproductive rules. USTelecom's Petition is consistent with the Commission's initiative and provides a procedural vehicle to eliminate expeditiously a host of unnecessary and outdated legacy telecommunications regulations. In fact, with many of these rules the only potential continuing relevance was tied up in the uncertainty of universal service and intercarrier compensation reform. With comprehensive reform of these twin, broken systems now in place, those obstacles have been removed.

Forbearance is required because: (1) enforcement of the legacy telecommunications regulations that are the subject of this Petition are not necessary to ensure that rates or practices are just, reasonable, and nondiscriminatory; (2) enforcement of these regulations is not necessary to protect consumers; and (3) forbearance from applying the legacy telecommunications regulations at issue is consistent with the public interest. 47 U.S.C. § 160(a). Because the requirements of Section 10 have been met, the Commission must grant this Petition.

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I. INTRODUCTION

Pursuant to Section 10 of the Telecommunications Act of 1996 (“1996 Act”), and Sections 1.53 and 1.54 of the Commission’s rules,¹ the United States Telecom Association (“USTelecom”) respectfully petitions the Commission for forbearance from certain outdated legacy telecommunications regulations.²

¹ 47 U.S.C. § 160(c); 47 C.F.R. §§ 1.53-1.54.

² The specific regulations from which USTelecom seeks forbearance are set forth in Appendix A and are collectively referred to as the “legacy telecommunications regulations.” As noted in Appendix A and as discussed below, in some cases forbearance is requested for all incumbent local exchange carriers (“ILECs”) subject to the rules, while in other cases forbearance is requested only for those ILECs operating under price cap regulation at the federal level that have not previously been granted forbearance. Granting forbearance relief to broad classes of carriers is expressly contemplated by Section 10 and is consistent with Commission precedent. *See* 47 U.S.C. § 160(a) (providing for forbearance from “applying any regulation or any provision of the Act to a . . . class of telecommunications carriers or telecommunications services”); *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd. 13647, ¶ 22 (2008) (“*ARMIS Forbearance Order*”) (extending ARMIS forbearance relief to other carriers subject to the reporting requirements); *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. §160(c) from Application of the ISP Remand Order*, Order, 19 FCC Rcd. 20179, ¶¶ 10, 27 (2004) (granting forbearance with respect to the growth caps and new markets rule and extending forbearance to all telecommunications carriers).

The legacy telecommunications regulations from which USTelecom seeks forbearance are antithetical to the deployment of broadband, which is the “growing platform over which the consumer accesses a multitude of services, including voice, data, and video in an integrated way across applications and providers.”³ With the increased demand for broadband and the wealth of services it supports, the Commission has recognized the consumer benefits resulting from the “transition to IP networks” and “innovation in the broadband ecosystem.”⁴

In its recent order transforming and modernizing the current universal service and intercarrier compensation systems, the Commission concluded that these systems are “ill-equipped” to address the challenges of broadband services because they are “based on decades-old assumptions that fail to reflect today’s networks, the evolving nature of communications services, or the current competitive landscape.” *Universal Service Reform Order*, ¶ 6. The same is true for the legacy telecommunications regulations that are the subject of USTelecom’s Petition.

³ *Comment Sought on Transition from Circuit-Switched Network to All-IP Network*, NBP Public Notice #25, GN Docket Nos. 09-47, 09-51, 09-137, Public Notice, 24 FCC Rcd. 14272 (2009).

⁴ *See, e.g., Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 11-161, ¶ 655 (rel. Nov. 18, 2011) (“*Universal Service Reform Order*”); *Joint Statement on Broadband*, GM Docket No. 10-66, 25 FCC Rcd. 3420, ¶ 3 (2010); *see also Amendment of Part 27 of the Commission’s Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band, Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, Report and Order and Second Report and Order, 25 FCC Rcd. 11710, 11790, ¶ 196, n.483 (2010) (adopting enhanced build-out requirements for WCS licensees designed to spur investment that will “promote the rapid deployment of innovative broadband services to the public ...”); *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Fifth Memorandum Opinion and Order and Third Notice of Proposed Rulemaking, 24 FCC Rcd. 12258, 12269, ¶ 26 (2009) (noting the Commission’s desire to “promote the provision of innovative services, and promote rapid service to the public”); *see also* 47 U.S.C. § 157 (“It shall be the policy of the United States to encourage the provision of new technologies and services to the public.”).

The Commission's legacy telecommunications regulations were put in place long before the advent of broadband or the creation of the public Internet. These regulations are based on outdated assumptions about the technologies and business models that animate the communications industry. Developed under rate-of-return regulation, these regulations – the vast majority of which predate the 1996 Act and some of which were established prior to the breakup of the Bell System in 1984 – were intended to address a monopoly-era voice market in which consumers bought local service from their local phone company and long distance service from one of several interexchange carriers.

In today's broadband world and with the transition to price cap regulation, there is no longer any federal need for the legacy telecommunications regulations that are the subject of USTelecom's Petition. These regulations do not serve any regulatory purpose and do not provide the Commission with any useful information necessary to perform its regulatory functions. The Commission recognized as much when it granted the Bell Operating Companies ("BOCs") forbearance from some of these regulations⁵ and has acknowledged the need to eliminate others.⁶

⁵ See, e.g., *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd. 16440, ¶ 117 (2007) (granting forbearance from Equal Access scripting requirements to the BOCs and their independent ILEC affiliates) ("*Equal Access Scripting Forbearance Order*"); *Petition of AT&T Inc. for Forbearance under 47 U.S.C. §160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, Memorandum Opinion and Order, 23 FCC Rcd. 7302 (2008) (granting AT&T and BellSouth forbearance from cost assignment rules) ("*AT&T Cost Assignment Forbearance Order*"), *pet. for recon. pending, pet. for review pending, NASUCA v. FCC*, Case No. 08-1226 (D.C. Cir., filed June 23, 2008).

⁶ See, e.g., Public Notice, *Commission 2010 Biennial Review of Telecommunications Regulations*, CG Docket No. 10-266, DA 11-2050 (rel. Dec. 23, 2011) ("*2010 Biennial Review Public Notice*"); *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers*:

Furthermore, these regulations no longer reflect the realities of today's vibrantly competitive marketplace. In contrast to the monopoly-era voice market that existed when the legacy telecommunications regulations were adopted, the rapid deployment of broadband networks has given consumers access to a host of communications services from a variety of sources, including cable operators, wireless carriers, and Voice over Internet Protocol ("VoIP") providers.⁷

USTelecom estimates that today less than half of American households purchase voice service from an ILEC, and this number is continuing to decline.⁸ Nearly one-third (32 percent) of telephone households have completely "cut the cord" and have only a wireless phone, according to the latest survey from the Center for Disease Control (CDC), which produces the most authoritative report on this issue.⁹ This trend is only going to continue. Indeed, by the end

(footnote cont'd.)

Phase 2, etc., Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 19911, ¶ 212 (2001) (tentatively concluding a decade ago "that we should eliminate our detailed [continuing property records] rules in three years.").

⁷ See, e.g., Remarks of FCC Chairman Julius Genachowski, Georgetown Center for Business and Public Policy, Georgetown University, Washington, D.C., at 1-2 (Nov. 7, 2011) ("We are living in a world imagined by Steve Jobs, Bill Gates, Marc Andreessen and other visionaries, but in too many ways the FCC rules and processes I inherited were built for the world of Alexander Graham Bell.") ("*Genachowski Georgetown Remarks*") (available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1107/DOC-310876A1.doc).

⁸ The data underlying USTelecom's estimates are set forth in Appendix B. One industry analyst has projected that the ILEC share of the voice market could be below 40% by the end of 2012. See JSI Capital Advisors, Communications Industry Forecast 2011-2020: ILEC and CLEC Access Lines, The ILEC Advisor: Communications Industry Trends, Strategies and Perspectives (Oct. 20, 2011) (available at <http://www.jsicapitaladvisors.com/the-ilec-advisor/2011/10/20/communications-industry-forecast-2011-2020-ilec-and-clec-acc.html>).

⁹ Blumberg & Luke, *Wireless Substitution: Early Release Estimates From the National Health Interview Survey, January to June 2011*, Center for Disease Control National Center for Health Statistics (rel. Dec. 21, 2011) ("CDC 2011 Wireless Substitution Study") (available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201112.pdf>)). The Commission routinely relies upon the CDC's studies of wireless substitution in its market analysis. See, e.g.,

of this year, it is projected that more American households will have only a wireless phone than those households purchasing wireline voice service from all ILECs combined.¹⁰ In addition, cable operators already have at least 20 percent of the residential voice market and offer voice service to an estimated 93 percent of American households. These same cable companies are also the largest providers of residential broadband, which facilitates voice competition from over-the-top VoIP providers such as Skype and Vonage, among others.

In addition to being unnecessary and outdated, the legacy telecommunications regulations at issue impose costs and burdens on certain competitors and favor certain technologies over others. The rules that are the subject of USTelecom's Petition apply only to ILECs or a small subset of ILECs, while other competitors – cable operators, wireless carriers, and VoIP providers – are exempt from complying with these regulatory requirements. This asymmetrical regulatory regime distorts competition to the detriment of consumers and should be eliminated.

The elimination of the legacy telecommunications regulations that are the subject of USTelecom's Petition is necessary to realize the pro-competitive, deregulatory goals of the 1996 Act.¹¹ In the 1996 Act, Congress embraced the principle that efficient government agencies should not perpetuate unnecessary and inefficient regulatory obligations. In fact, Congress expressly directed in Section 11 of the 1996 Act that the Commission eliminate outdated

(footnote cont'd.)

Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 11-161, ¶ 164 (rel. Nov. 18, 2011) (“*Universal Service Reform Order*”) (citing CDC Study from July to December 2010).

¹⁰ See, e.g., “Wireless Will Take the Lead Next Year,” *The Daily Advisor*, JSI Capital Advisors (Oct. 26, 2011).

¹¹ See, e.g., *AT&T v. FCC*, 452 F3d 830, 832 (D.C. Cir. 2006) (noting “Congress’s deregulation strategy” embodied in the 1996 Act); *2000 Biennial Regulatory Review*, Notice of Proposed Rulemaking, 15 FCC Rcd. 20008, 20010, ¶ 1 (2000) (noting that “[t]he major purpose of the 1996 Act is to establish ‘a pro-competitive, deregulatory national policy framework’”) (citations omitted).

regulations that are no longer in the public interest.¹² The Commission repeatedly has recognized the public interest benefits of eliminating unnecessary regulatory requirements.¹³

The elimination of the outdated and unnecessary telecommunications regulations that are the subject of USTelecom's Petition also is consistent with the Obama Administration's goal of

¹² See 47 U.S.C. § 161 (mandating that the Commission review all of its regulations relating to providers of telecommunications service and "determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service," in which case the Commission "shall repeal or modify" the subject regulation). For years, the industry has identified many of the legacy telecommunications regulations that are the subject of USTelecom's Petition as ripe for elimination as part of the Commission's biennial review process mandated by Section 11. See, e.g., Comments of the United States Telecom Association, WC Docket 06-157 (filed Sept. 1, 2006); Comments of Verizon, WC Docket No. 08-193 (filed Oct. 8, 2008); Comments of AT&T, Inc., WC Docket No. 10-272 (filed Jan. 31, 2011). Unfortunately, the biennial review process has not resulted in meaningful changes to the Commission's rules.

¹³ See, e.g., *Reporting Requirements for U.S. Providers of International Telecommunications Services; Amendment of Part 43 of the Commission's Rules*, IB Docket No. 04-112, First Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 7274, ¶ 1 (2011) (eliminating "outdated and unnecessary reporting obligations related to international telecommunications traffic for which the burdens on U.S. international service providers now outweigh the benefits") ("*International Reporting Requirements Order*"); *Applications of National Football League; Request for Waiver of the Call Sign Identification Requirements of 47 C.F.R. § 90.425*, 20 FCC Rcd. 17064, 17065, ¶ 4 (2005) (concluding that "it serves the public interest to eliminate an unnecessary regulatory requirement that burdens a licensee in the conduct of its business"); *Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures*, Notice of Proposed Rulemaking, 10 FCC Rcd. 10624, 10626, ¶ 10 (1995) (proposing to eliminate unnecessary regulatory requirements applicable to satellite carriers); *Amendment of the Commission's Space Station Licensing Rules and Policies; 2000 Biennial Regulatory Review – Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Fourth Report and Order, 19 FCC Rcd. 7419 (2004) (eliminating certain regulatory requirements as part of the Commission's "continuing effort to eliminate outdated regulatory requirements and expedite provision of satellite services to the public"); see also 47 C.F.R. § 54.711(c) (allowing the Bureau to "waive, reduce, modify, or eliminate reporting requirements that prove unnecessary . . .").

“getting rid of absurd and unnecessary paperwork requirements that waste time and money”¹⁴ and “cutting down on the paperwork that saddles businesses with huge administrative costs.”¹⁵ Indeed, President Obama has issued two Executive Orders that direct agencies – including independent agencies such as the Commission – to reduce regulatory burdens and costs.¹⁶

As Chairman Genachowski has explained to members of Congress, he “welcomed” the Executive Orders upon their issuance “and intend[s] to ensure that the Commission acts in accordance with [them].”¹⁷ Consistent with the President’s directives, the Chairman has

¹⁴ President Barack Obama, “Toward a 21st Century Regulatory System,” Wall Street Journal, January 18, 2011, *available at* <http://online.wsj.com/article/SB10001424052748703396604576088272112103698.html>.

¹⁵ Remarks by President Obama to the Chamber of Commerce, U.S. Chamber of Commerce Headquarters, Washington, D.C., February 7, 2011, *available at* <http://www.whitehouse.gov/the-pressoffice/2011/02/07/remarks-president-chamber-commerce>. Cass Sunstein, the Administrator for the Office of Information and Regulatory Affairs (the government body that implements the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501–3521) similarly emphasized in a memorandum to the Chief Information Officers of the federal agencies that “[p]aperwork and reporting requirements impose significant burdens on the American people, including those who run businesses, both large and small.” Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, “Minimizing Paperwork and Reporting Burdens; Data Call for the 2011 Information Collection Budget,” Memorandum for Chief Information Officers, at 1 (Feb. 23, 2011), http://www.whitehouse.gov/sites/default/files/omb/inforeg/icb/2011_ICB_Data_Call.pdf.

¹⁶ In January 2011, President Obama released an Executive Order that called on all executive agencies to reexamine their significant rules, and to streamline, reduce, improve, or eliminate them on the basis of that examination. Executive Order, *Improving Regulation and Regulatory Review* (Jan. 18, 2011), *available at* <http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order>. In July 2011, the President took this burden-reducing initiative a large step further by calling on independent regulatory agencies – including the FCC – to follow the same requirements that other agencies now follow. Executive Order, *Regulation and Independent Regulatory Agencies* (July 11, 2011), *available at* <http://www.whitehouse.gov/the-press-office/2011/07/11/executive-order-regulation-and-independent-regulatory-agencies>.

¹⁷ See, e.g., Letter from Julius Genachowski, Chairman, Federal Communications Commission to The Hon. John Barrow, U.S. House of Representatives, Sept. 12, 2011; Letter from Julius Genachowski, Chairman, Federal Communications Commission to The Hon. Dan Boren, U.S. House of Representatives, Sept. 12, 2011; Letter from Julius Genachowski, Chairman, Federal Communications Commission to The Hon. Dennis Cardoz, U.S. House of

articulated his objectives to “streamline and modernize the Commission’s rules and reduce unneeded burdens on the private sector,”¹⁸ and the Commission recently released a plan to identify “outmoded or counterproductive rules.”¹⁹ Granting USTelecom’s Petition would give meaning to the President’s directives and allow the Commission to achieve the Chairman’s objectives.

The Commission has not just the power but the *duty* under Section 10 of the 1996 Act to forbear from enforcing regulatory requirements if the Commission determines that: (1) enforcement of the provision or regulation is not necessary to ensure that the telecommunications carrier’s charges or practices are just, reasonable, and nondiscriminatory; (2) enforcement of the provision or regulation is not necessary to protect consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest. 47 U.S.C. § 160(a). Each of these three statutory requirements is satisfied here.

First, the legacy telecommunications regulations at issue have no bearing on whether a carrier’s interstate rates or practices are just, reasonable, and nondiscriminatory, particularly for those carriers operating under price cap regulation. Second, consumers are protected by

(footnote cont’d.)

Representatives, Sept. 12, 2011; *see also* Statement from FCC Chairman Julius Genachowski on the Executive Order on Regulatory Reform and Independent Agencies, News Release, July 11, 2011 available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308340A1.pdf.

¹⁸ *International Reporting Requirements Order*, 26 FCC Rcd. 7274 (Statement of Chairman Julius Genachowski); *see also* Prepared Remarks of FCC Chairman Julius Genachowski, “Jobs and the Broadband Economy,” Livingsocial, Washington, D.C., at 6 (Sept. 27, 2011) (noting that the Government must ensure that its rules “meet the challenges of today, not the past”); *Genachowski Georgetown Remarks*, at 2 (“It’s important that the FCC review our major rules regularly. We operate in the fast moving world of telecommunications, where changes in technology occur in real time. In our world, both for companies and for the FCC, standing still can mean moving backward.”).

¹⁹ *See* Preliminary Plan for Retrospective Analysis of Existing Rules, Federal Communications Commission, at 2 (rel. Nov. 7, 2011) (“*Retrospective Analysis Plan*”).

allowing the marketplace to provide them with a robust choice of services from a variety of competing providers, not by continuing to impose rules that are the relic of a bygone regulatory era. Third, the same benefits to competition and to consumers discussed above ensure that forbearance is in the public interest. *See* 47 U.S.C. § 160(b). Conversely, continuing to apply antiquated legacy telecommunications regulations that no longer serve any valid regulatory purpose would distort competition and *harm* the public interest by imposing unnecessary costs and burdens on the limited number of competitors subject to such regulations. Because the criteria for forbearance have been satisfied, the Commission must grant USTelecom’s Petition.

II. CHANGES IN THE COMMUNICATIONS MARKETPLACE WARRANT FORBEARANCE FROM LEGACY TELECOMMUNICATIONS REGULATIONS.

Pursuant to Section 10 of the Act, the Commission shall forbear from applying to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, any statutory provision or regulation if it determines (1) the enforcement of such requirements is not necessary “to ensure that the charges, practices, classifications, or regulations” for the carrier or service in question “are just and reasonable and are not unjustly or unreasonably discriminatory”; (2) enforcement of such requirements is not necessary “for the protection of consumers”; and (3) forbearance is consistent with the public interest. 47 U.S.C. § 160 (a). In determining whether forbearance is consistent with the public interest, the Commission also must consider “whether forbearance from enforcing the provision or regulation will promote competitive market conditions.” 47 U.S.C. § 160(b).²⁰

²⁰ In 2009, the Commission adopted procedural rules governing forbearance petitions. *See Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, WC Docket No. 07-267, Report and Order, 24 FCC Rcd. 9543 (2009) (“*Forbearance Procedural Order*”). These provisions are

Consistent with the requirement that a petitioner “specify how each of the statutory criteria is met with regard to each statutory provision or rule, or requirement from which forbearance is sought,” 47 C.F.R. § 1.54(b)(1), USTelecom discusses each legacy regulation in Section III below. However, in keeping with the Commission’s view “that this requirement is not formalistic or otherwise rigid and inflexible” and its admonition for petitioners “to concentrate on the substance of their arguments, and to refrain from rote repetition,” *Forbearance Procedural Order* ¶ 14, USTelecom sets forth in this Section II the factual and legal arguments that apply fully and individually to each regulatory provision from which forbearance is sought and that comprise its prima facie case for forbearance with respect to the legacy telecommunications regulations at issue.

A. **Enforcement of the Legacy Telecommunications Regulations is not Necessary to Ensure that the Charges, Practices, Classifications, or Regulations by, for, or in Connection with any Telecommunications Carrier are Just and Reasonable and Are Not Unjustly or Unreasonably Discriminatory.**

The first prong of the three-part forbearance standard requires the Commission to determine that enforcement of the regulation at issue is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with the carrier or service are just and reasonable and are not unjustly or unreasonably discriminatory. 47 U.S.C. § 160(a)(1). There are two overarching reasons why this first prong is met for the legacy telecommunications regulations that are the subject of USTelecom’s Petition.

(footnote cont’d.)

intended to ensure that forbearance petitions are “complete as filed,” meaning that all forbearance petitions must state explicitly the scope of the relief requested, address each prong of the statute as it applies to the rules or provisions from which the petitioner seeks relief, identify any other proceedings pending before the Commission in which the petitioner has addressed the relevant issues, and comply with certain formatting requirements. *Id.*, ¶ 11.

First, these legacy regulations are pointless and burdensome administrative exercises that no longer serve any valid regulatory purpose in today's broadband world. Many of the legacy telecommunications regulations from which USTelecom seeks forbearance are largely remnants of rate-of-return regulation that were intended to safeguard against carriers improperly shifting costs to regulated rates for circuit-switched voice services. However, as the Commission has observed, "price cap regulation severs the direct link between regulated costs and prices,"²¹ and thus the interstate rates that a price cap carrier can charge are not affected by its regulated costs. Because the shifting of costs no longer results in a corresponding increase in interstate rates under price cap regulation, any regulatory justification for legacy requirements that were intended to monitor or guard against such cost shifting has vanished.

The Commission recognized as much when it granted forbearance from various legacy accounting and reporting requirements in the *AT&T Cost Assignment Forbearance Order*, the *ARMIS Forbearance Order*, and the *Qwest ARMIS Forbearance Order*. In each case, the Commission found that the requirements at issue as applied to the BOCs were not necessary to ensure that charges and practices are just, reasonable, and nondiscriminatory by virtue of the

²¹ *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd. at 7305-06, ¶ 8 (quoting *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards*), CC Docket No. 90-623, Report and Order, 6 FCC Rcd. 7571, 7596, ¶ 55 (1991) ("Computer III Remand Order"), vacated in part and remanded, *California v. FCC*, 39 F.3d 919 (9th Cir. 1994), cert. denied, 514 U.S. 1050 (1995); see also *Petition of Qwest Corp. for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c)*, Memorandum Opinion and Order, 23 FCC Rcd. 18483, ¶ 10 (2008) ("*Qwest ARMIS Forbearance Order*"); see also *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd. 14853 (2005) ("... the BOCs' costs are no longer used to determine the BOCs' price cap rates") ("*Wireline Broadband Order*"), aff'd *Time Warner Telecom v. FCC*, 507 F.3d 205 (3rd Cir. 2007).

BOCs' operating under price cap regulation.²² This same reasoning applies to many of the regulations from which USTelecom seeks forbearance. Because there is no current, federal need for the legacy telecommunications regulations at issue as applied to price cap carriers, these regulations are not necessary to ensure that price cap carriers' charges and practices are just, reasonable, and nondiscriminatory.

Second, the explosion of competition from a variety of service providers utilizing different technologies and platforms has rendered these legacy telecommunications regulations—which originated in a monopoly era for voice services—unnecessary to ensure just, reasonable, and nondiscriminatory rates. As explained in more detail in Appendix B, today's communications marketplace is vastly different than when the legacy telecommunications regulations at issue were adopted. ILECs are no longer the single source of service in the home, as was the case when many of the regulations at issue were promulgated. Instead, competitive choices continue to proliferate, as customers seeking communications service today have a host of choices, including cable companies, wireless carriers, and VoIP providers. This competitive reality was one of the primary factors underlying the Commission's recent decision to modernize the universal service and intercarrier compensation systems.²³

Competition in today's communications marketplace takes a variety of forms. With IP-based networks continuing to displace the PSTN, approximately 95 percent of American

²² See, e.g., *Qwest ARMIS Forbearance Order*, ¶ 10 (“Because Qwest’s, AT&T’s, and Verizon’s interstate rates are now generally regulated under price caps, we agree that the ARMIS Financial Reports are unnecessary in determining whether those carriers’ rates are just, reasonable, and not unjustly or unreasonably discriminatory ...”).

²³ *Universal Service Reform Order*, ¶ 9 (noting the competition that has “emerged among telephone companies, cable companies, and wireless providers for bundles of local and long distance phone services and other services”); see also *id.*, ¶ 11 (noting the importance of “accelerat[ing] the transition from circuit-switched to IP networks ...”).

households have access to wireline broadband that meets the Commission's standard of at least 4 Mbps downstream and 1 Mbps upstream.²⁴ As consumers increasingly migrate to broadband networks, voice is just one of many applications available from a multitude of providers.²⁵

Indeed, major Internet providers – including Google and Facebook – are currently offering voice services.²⁶ In addition, cable operators offering “triple play” services are formidable competitors in today's communications marketplace. According to the cable

²⁴ FCC, *Connecting America: The National Broadband Plan*, at 136 & 157, nn.6, 7 (Mar. 2010) (“*National Broadband Plan*”); see also *Universal Service Reform Order*, ¶ 4 (“Approximately 18 million Americans live in areas where there is no access to robust fixed broadband networks” (citing National Telecommunications and Information Administration, National Broadband Map)) (available at <http://www.broadbandmap.gov/summarize/nationwide>).

²⁵ *Universal Service Reform Order*, ¶ 11 (stressing the need to “modernize and refocus” the universal service and intercarrier compensation systems in order “to make affordable broadband available to all Americans and accelerate the transition from circuit-switched to IP networks, with voice ultimately one of many applications running over fixed and mobile broadband networks”); see, e.g., Skype S.A., *SEC Amendment No. 2 To Form S-1 Registration Statement*, at 134 (filed Apr. 13, 2011), www.sec.gov/Archives/edgar/data/1498209/000119312511056174/ds1a.htm#rom83085_12 (reporting that Skype has 663 million registered users, up from 474 million in 2009; Skype users made 207 billion minutes of voice and video calls using Skype; and 20% of the world's international long-distance calling minutes are estimated to be made with Skype, up from 13% in 2009); Vonage Holdings Corp., *SEC Form 10-Q*, at 23 (filed Aug. 4, 2011), <http://ir.vonage.com/secfiling.cfm?filingID=1193125-11-38059> (reporting approximately 2.4 million subscriber lines).

²⁶ Google Voice service allows users to both place calls to and receive calls from the PSTN using a variety of devices and access networks. See Google, “Google Voice – Features” <http://www.google.com/googlevoice/about.html>. Facebook has been experimenting with voice communications, both through a video chat application introduced as a partnership with Skype and through third party app developers. Facebook, “Facebook Video Calling”, <http://www.facebook.com/videocalling/>; Kevin C. Tofel, “Look Out Skype! T-Mobile Powers Facebook VoIP” *N.Y. Times.com*, <http://www.nytimes.com/external/gigaom/2011/04/19/19gigaom-look-out-skype-t-mobile-powers-facebook-voip-26584.html> (Apr. 19, 2011).

industry's trade association, cable high speed Internet access alone is available to 93% of U.S. households,²⁷ and cable operators currently serve 24.7 million voice customers.²⁸

There also are now more than 300 million wireless subscribers in the United States.²⁹ In excess of 99 percent of the population has access to wireless service offered by one or more providers, and over 97 percent of the population lives in areas with at least three wireless providers.³⁰ As wireless providers continue their 4G deployments, and new entrants come onto the scene, competition will become even more fierce.

In short, in today's communications market, competition constrains the rates that ILECs can charge for their services. With such intense competition, there is simply no opportunity or incentive for ILECs to charge unjust, unreasonable, or discriminatory rates or engage in unjust, unreasonable, or discriminatory conduct.³¹ Indeed, robust competition such as that typifying all

²⁷ National Cable and Telecommunications Association, Availability, <http://www.ncta.com/StatsGroup/Availability.aspx>.

²⁸ National Cable and Telecommunications Association, Industry Data, <http://www.ncta.com/Statistics.aspx>.

²⁹ Wireless Quick Facts, Year-End Figures, CITA—The Wireless Association® (December 2010) (available at http://www.ctia.org/media/industry_info/index.cfm/AID/10323).

³⁰ *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 10-133, Fifteenth Report, 26 FCC Rcd. 9664, 9669 (2011).

³¹ *Telecommunications Carriers Eligible for Universal Service Support; PlatinumTel, LLC Petition for Forbearance; CAL Communications, Inc. Petition for Forbearance; ReCellular, Inc. (MSA Wireless) Petition for Forbearance*, WC Docket No. 09-197, Order, FCC 11-139, ¶ 9 (rel. Sept. 23, 2011) (granting forbearance to non-facilities based, wireless resellers from the facilities-based requirement for federal universal service support when such providers “face existing or potential competition, which should ensure that their rates are just and reasonable and not unjustly or unreasonably discriminatory”); *see also Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, Order, 20 FCC Rcd. 15095, ¶ 13 (2005) (same); *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*; *SBC Communications Inc.'s Petition for Forbearance Under 47 U.S.C. § 160(c)*; *Qwest Communications International Inc. Petition for Forbearance Under 47*

segments of today's communications marketplace "is the most effective means of ensuring that the charges, practices, classifications, and regulations with respect to [a telecommunications service] are just and reasonable, and not unjustly or unreasonably discriminatory."³²

B. Enforcement of the Legacy Telecommunications Regulations is not Necessary for the Protection of Consumers.

The second prong of the Commission's statutorily-mandated forbearance analysis is a determination that enforcement of the regulation or provision is not necessary for the protection of consumers. 47 U.S.C. § 160(a)(2). For the same reasons that these legacy regulations are not necessary to ensure just, reasonable, and nondiscriminatory charges and practices, they are not

(footnote cont'd.)

U.S.C. § 160(c); BellSouth Telecommunications, Inc., Petition for Forbearance Under 47 U.S.C. § 160(c), Memorandum Opinion and Order, 19 FCC Rcd. 21496, ¶ 22 (2004) (granting forbearance from enforcing the requirements of section 271 to the BOCs with regard to the broadband elements that the Commission had relieved from unbundling obligations, finding that the first prong of the forbearance test had been satisfied when "the preconditions for monopoly are not present" in the broadband market given "actual and potential intermodal competition").

³² *Petition of US WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance, Memorandum Opinion and Order, 14 FCC Rcd. 16252, ¶ 31 (1999); see also Implementation of Sections 3(n) and 332 of the Communications Act, Second Report & Order, 9 FCC Rcd. 1411, ¶ 174 (1994) ("[c]ompetition, along with the impending advent of additional competitors, leads to reasonable rates"); see also id., ¶ 173 ("in a competitive market, market forces are generally sufficient to ensure the lawfulness of rate levels, rate structures, and terms and conditions of service ...") ("US WEST Declaratory Ruling"); See, e.g., *Orloff v. Vodafone AirTouch Licensees LLC*, 17 FCC Rcd. 8987, ¶ 24 (2002) (noting that "the Commission has regulated CMRS though competitive market forces, declining to impose specific cost-based regulations on CMRS providers"), *aff'd Orloff v. FCC*, 352 F.3d 415 (D.C. Cir. 2003); *The Merger of MCI Communications Corporation and British Telecommunications plc*, GN Docket No. 96-245, Memorandum Opinion and Order, 12 FCC Rcd. 15351, ¶ 204 (1997) ("competition can protect consumers better than the best-designed and most vigilant regulation"); see also *Comsat Corp., Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier*, Order and Notice of Proposed Rulemaking, 13 FCC Rcd. 14083, ¶ 134 (1998) (noting the Commission's actions "to limit the application of unnecessary regulation where competition would serve as a better regulator"); *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, 11 FCC Rcd. 3873, 3878 (1995) ("where we can reduce our regulations because of effective competition, carriers are better able to respond to consumer demand for innovative services at the lowest reasonable price").*

necessary to protect consumers. *See, e.g., Qwest ARMIS Forbearance Order*, ¶ 15.

Furthermore, because there is no current, federal need for the legacy telecommunications regulations at issue, continued application of these regulations imposes unnecessary costs that harm rather than protect consumers.

In addition, the legacy telecommunications regulations from which USTelecom seeks forbearance harm consumers by hampering the deployment of broadband. Some regulations impose roadblocks to broadband deployment or otherwise delay a provider's ability to roll out new and innovative IP-based services. Others divert resources that would be better spent on developing IP-based services and meeting consumers' broadband needs rather than ensuring compliance with antiquated rules.³³

Even with forbearance from these legacy telecommunications regulations, other consumer protections would remain in place. First, USTelecom's Petition does not seek forbearance from the application of price cap regulation, privacy, disability access, or other aspects of the Commission's regulatory consumer safety net. Instead, USTelecom is only seeking forbearance of anachronistic regulations that have no impact on consumers and are unnecessary for consumer protection purposes. Second, even when it requests forbearance from a significant portion of a particular regulation, USTelecom has taken care to preserve essential consumer safeguards. So, for example, while forbearance is sought from the obligation to obtain Commission approval prior to discontinuing legacy offerings that will be replaced by new

³³ *See, e.g., AT&T Cost Assignment Forbearance Order*, ¶ 36 ("by diverting AT&T resources that would otherwise be directed to 'positive activities that generate consumer benefit,' the Commission concluded that, 'rather than being necessary for the protection of consumers, ... the Cost Assignment Rules could hinder consumer welfare.'").

broadband services, carriers would continue to be subject to the requirement to notify customers and the Commission of such changes.

Additionally, carriers would continue to be subject to countless other Federal and state requirements that are intended to protect consumers. For example, carriers would continue to adhere to Generally Accepted Accounting Principles (“GAAP”) (or a successor regime) in keeping their books and reporting their financial performance. Likewise, the Sarbanes-Oxley Act enacted in 2002 imposes significant recordkeeping requirements by expanding the scope of work that an auditor must perform and by requiring management and auditors to assess, document, and report on the effectiveness of financial reporting internal controls.³⁴ Consistent with Securities and Exchange Commission (“SEC”) regulations, public companies must report financial information to the SEC, including an annual Form 10-K and quarterly Form 10-Q reports. 15 U.S.C. §§ 78m, 780(d). Public companies also are subject to the Foreign Corrupt Practices Act, which requires every publicly traded company to make and keep “books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.” 15 U.S.C. § 78m(b)(2)(A). These additional, overarching obligations protect consumers and obviate any continued need for the legacy telecommunications regulations addressed in USTelecom’s Petition.³⁵

Finally, perhaps the most compelling evidence that forbearance from these legacy telecommunications regulations would not harm consumers is that the vast majority of

³⁴ See generally Public Company Accounting Reform and Corporate Responsibility Act of 2002 (Sarbanes-Oxley Act of 2002), 15 U.S.C. § 7201 et. seq. (2006).

³⁵ See, e.g., *AT&T Cost Assignment Forbearance Order*, ¶ 38 (finding “that the Cost Assignment Rules are not necessary to protect consumers by ensuring the integrity of AT&T’s financial records through financial transparency or accountability” given “GAAP, Securities and Exchange Commission, the Sarbanes-Oxley Act, and other financial accounting and reporting requirements ...”).

competitors – including cable operators, wireless carriers, and VoIP providers – are exempt from their reach, and, in several instances, the Commission already has granted forbearance to the very largest ILECs as well. That these regulations are inapplicable to large swaths of the competitive marketplace only underscores that such regulations are not necessary to protect consumers, particularly in light of the many continuing safeguards that will remain in place.

C. Forbearance From Applying the Legacy Telecommunications Regulations is Consistent with the Public Interest.

The final prong of the forbearance standard is a determination of whether forbearance from the regulations at issue would be consistent with the public interest. Here, Section 10 of the Communications Act instructs the Commission to consider the impact forbearance would have on competitive market conditions. 47 U.S.C. § 160(b). “If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.” *Id.*

The same benefits to competition and to consumers discussed above ensure that forbearance from the legacy telecommunications regulations addressed in USTelecom’s Petition is in the public interest. Granting USTelecom’s Petition also would advance the public interest by eliminating regulations that disparately impact only one group of competitors.³⁶

³⁶ See, e.g., *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended*, Memorandum Opinion and Order, WC Docket No. 06-109, 42 CR 463, ¶ 129 (Aug. 20, 2007) (“*ACS Forbearance Order*”); *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd. 4685, 4696, ¶ 21 (2005) (noting that “in a market where carriers are offering the same services and competing for the same customers, disparate treatment of different types of carriers or types of traffic has significant competitive implications” and could give one carrier “a competitive advantage over another type of carrier ...”); *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*,

Furthermore, the public interest would be better served by eliminating the legacy telecommunications regulations from which USTelecom seeks forbearance that currently frustrate the transition to broadband networks and the deployment of new and innovative broadband services. It also is in the public interest to eliminate unnecessary regulations that impose costs on the industry, and every government agency should strive to increase efficiencies by doing away with outdated regulatory requirements.³⁷ The Obama Administration and this Commission have made the elimination of burdensome and unnecessary regulations a priority.³⁸ As President Obama recently explained to a joint session of Congress, “We should have no more regulation than the health, safety and security of the American people require. Every rule should meet that common-sense test.”³⁹

Consistent with President Obama’s vision, Chairman Genachowski repeatedly has emphasized the Commission’s desire to “remove barriers and ease the regulatory burden, where

(footnote cont’d.)

Declaratory Ruling, 22 FCC Rcd. 5901, 5920, ¶ 53 (2007) (noting that the “disparate treatment” of competitors “would introduce competitive distortions into the marketplace”); *see also* *Regulatory Analysis Plan* at 10 (noting Commission’s intent to conduct “retrospective reviews of regulations ... when it appears that existing rules are disproportionately or overly burdensome”).

³⁷ *See, e.g., Amendment of Section 64.702 of the Commission’s Rules and Regulations (Second Computer Inquiry)*, 77 F.C.C. 2d 384, ¶ 109 (1980) (“*Computer II*”) (avoidance of unnecessary cost is in the public interest); *2000 Biennial Regulatory Review--Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II*, CC Docket 00-199, Report and Order, 16 FCC Rcd. 19911, 19913, ¶ 2 (“any unnecessary regulation places a corresponding, unnecessary burden on the carriers that are subject to it”).

³⁸ *See, e.g.,* President Barack Obama, Executive Order 13563 (Jan 18, 2011) (noting that the country’s regulatory system should “promot[e] economic growth, innovation, competitiveness, and job creation” by using “the best, most innovative, and least burdensome tools for achieving regulatory ends”); Preliminary Plan for Retrospective Analysis of Existing Rules, Federal Communications Commission, at 2 (rel. Nov. 7, 2011).

³⁹ *See* President Barack Obama, Address to a Joint Session of Congress, Sept. 8, 2011, Washington, D.C., *available at* <http://www.whitehouse.gov/the-press-office/2011/09/08/address-president-joint-session-congress>.

possible.”⁴⁰ Indeed, the Commission has established its ongoing Data Innovation Initiative – a process that already has resulted in the elimination of certain international telecommunication traffic reporting obligations.⁴¹ As the Chairman has explained, these “extensive efforts to eliminate outdated regulations are rooted in [the Commission’s] commitment to ensure that FCC rules and policies promote a healthy climate for private investment and job creation.”⁴² USTelecom’s Petition presents an opportunity for the Commission to continue these efforts and serve the public interest by granting forbearance from the continued application of antiquated and burdensome regulations that are unnecessary in today’s telecommunications marketplace.

III. EACH OF THESE LEGACY TELECOMMUNICATIONS REGULATIONS ARE UNNECESSARY, DISTORT COMPETITION, AND MEET THE REQUIREMENTS FOR FORBEARANCE.

Each of the regulatory requirements from which USTelecom seeks forbearance individually satisfies all three prongs of the Section 10 standard, and the arguments set forth above apply equally to each such requirement. Consistent with Section 1.54(b)(1) of the Commission’s rules, USTelecom addresses below each requirement and provides additional facts and arguments demonstrating that the standards for forbearance have been satisfied. As explained in further detail below, each of these regulatory requirements has outlived its

⁴⁰ “Prepared Remarks of Chairman Julius Genachowski at the Broadband Acceleration Conference,” at 4 (Feb. 9, 2011) (available at http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0209/DOC-304571A1.pdf).

⁴¹ *Reporting Requirements for U.S. Providers of International Telecommunications Services*, IB Docket No. 04-112, First Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 7274 (2011).

⁴² *FCC Chairman Genachowski Continues Regulatory Reform to Ease Burden on Businesses; Announces Elimination of 83 Outdated Rules*, News Release, Aug. 22, 2011 (available at http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-309224A1.pdf); see also *Genachowski Georgetown Remarks* at 2 (“From Day One, our team at the FCC has been focused on ensuring that our rules and processes are creating a healthy climate for private investment and innovation in our space, and smartly empowering consumers”).

usefulness and no longer serves any regulatory purpose. Thus, these requirements are unnecessary to ensure just, reasonable, and nondiscriminatory rates and practices and to protect consumers, and their continued enforcement is not in the public interest.

A. Equal Access Scripting requirement.

The Commission should forbear from the application of the Equal Access Scripting requirement to all small and mid-sized independent ILECs that remain subject to this requirement. The Commission granted forbearance from the Equal Access Scripting requirement to the BOCs and their independent ILEC affiliates in 2007 and has questioned the continued relevance of this requirement for nearly a decade.⁴³

The Equal Access Scripting requirement originated with divestiture and is preserved by section 251(g) of the 1996 Act, requiring ILECs to inform customers who call to obtain new local exchange service that they may obtain long distance service from other carriers and to read a list of carriers offering long distance service in their area upon the customer's request.⁴⁴ The

⁴³ *Equal Access Scripting Forbearance Order*, ¶ 117; *Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, Notice of Inquiry, 17 FCC Rcd. 4015, ¶ 11 (2002) (seeking comment on the extent to which Equal Access Scripting requirement remains “relevant” “[i]n an era when there are no longer any dominant interexchange providers ...”) (“*Equal Access NOF*”); *2010 Biennial Review Public Notice* at (recommending that the Commission “consider revising” the Equal Access Scripting requirement).

⁴⁴ *See Investigation of Access and Divestiture Related Tariffs, Allocation Plan Waivers and Tariffs*, CC Docket No. 83-1145 Phase I, Memorandum Opinion and Order, 101 FCC 2d 935, 949-50, ¶ 40 (CCB 1985), *recon. denied*, 102 FCC 2d 503 (1985); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 21905, 22046, ¶ 292 (1997); *Application of BellSouth Corp., et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-208, Memorandum Opinion and Order, 13 FCC Rcd. 539, 667-72, ¶¶ 231-39 (1997) (stating that BOCs are permitted to market their own long distance services as long as their marketing scripts fulfill the equal access requirements), *aff'd*, *BellSouth Corp. v. FCC*, 162 F.3d 678 (D.C. Cir. 1998).

Equal Access Scripting requirement was intended to promote competition in stand-alone long distance services when such competition was “nascent” and when “little, if any” competition existed in the local exchange market. *Equal Access Scripting Forbearance Order*, ¶ 120.

Current market conditions obviate any continued need for the Equal Access Scripting requirement. Indeed, the Commission previously determined that forbearance from the Equal Access Scripting requirement satisfies the three-prong test in Section 10 when it granted forbearance from this requirement to AT&T, Verizon, and Qwest and the BOCs’ then independent ILEC affiliates. In finding that the Equal Access Scripting requirement was unnecessary to ensure just, reasonable, and nondiscriminatory rates and practices, the Commission noted the substantial changes in market conditions. Specifically, with cable operators and VoIP providers making available service bundles that include both local and long distance service, with subscribers relying upon their wireless devices for long distance calling, and with residential customers having access to prepaid calling cards to make long distance calls, the Commission concluded that: (1) “the stand-alone long distance market is becoming a fringe market”; and (2) “the minority of customers that still take stand-alone long distance now have additional options available for making long distance calls.” *Id.* ¶¶ 121-122.

In finding that the Equal Access Scripting requirement was unnecessary to protect consumers, the Commission noted that consumers have “numerous options” for long distance service. *Id.* ¶ 123. Indeed, the Commission was persuaded that the Equal Access Scripting requirement “is likely to distort competition for stand-alone long distance services by focusing solely on one type of competitive alternative,” which, according to the Commission, “could hinder consumers’ awareness of competitive alternatives” *Id.*

Finally, the Commission concluded that forbearance from the Equal Access Scripting requirement was in the public interest. In addition to distorting competition and harming consumers, the Commission found that the Equal Access Scripting requirement imposes “unnecessary costs on the BOCs.” *Id.*, ¶ 124. According to the Commission, even in the absence of the Equal Access Scripting requirements, customers would retain the right to obtain long distance from a carrier other than the BOCs, and the BOCs “remain subject to nondiscrimination obligations and must allow customers to exercise their rights under the remaining equal access obligations.” *Id.*

The Commission’s reasoning in the *Equal Access Scripting Forbearance Order* compels forbearance from the continued application of the Equal Access Scripting requirement to the small and mid-sized independent ILECs that remain subject to this requirement. The Commission’s findings regarding the substantial changes in market conditions and the significant harm to customers and carriers resulting from the Equal Access Scripting requirement are not unique to the BOCs and apply with equal vigor to those carriers that still must advise customers of their choices in long distance providers and must read a list of such providers upon request.

There is no justification for the continued application of the Equal Access Scripting requirement in today’s marketplace. Three years ago, USTelecom filed a waiver petition requesting that the Commission relieve small and mid-sized independent ILECs from the continued burdens of the Equal Access Scripting requirement that offered no demonstrable consumer benefits.⁴⁵ USTelecom’s waiver petition received broad industry support, and only

⁴⁵ See *Petition of the United States Telecom Association for Waiver from Application of the Equal Access Scripting Requirement*, WC Docket No. 08-225 (filed Nov. 10, 2008).

two comments were filed in opposition to the petition, both of which were limited to specific unique circumstances.⁴⁶

In light of the significant changes in the competitive landscape, consumers have a multitude of competitive alternatives for long-distance services, and the Equal Access Scripting requirement is no longer necessary to ensure that ILEC rates or practices are just, reasonable, and nondiscriminatory. Similarly, the requirement does nothing to protect consumers, and, as the Commission has recognized, may actually have the opposite effect by hindering consumer awareness of their competitive options. Finally, the uneven application of the Equal Access Scripting requirement to only small and mid-sized independent ILECs but not their competitors distorts the competitive process. That the Commission has relieved the largest ILECs from complying with the Equal Access Scripting requirement and has never applied this requirement to non-ILEC competitors demonstrate that forbearance from continued application of this requirement is consistent with the public interest.

B. BOC Open Network Architecture and Comparably Efficient Interconnection Requirements and Structural Separation Rule (47 C.F.R. § 64.702) and the Legacy All-Carrier Computer Inquiry Rule.

The Commission has recognized the limited utility of its *Computer Inquiry* regime in today's communications marketplace. It has eliminated *Computer Inquiry* requirements for broadband Internet access services and enterprise broadband offerings and proposed to eliminate

⁴⁶ See Comments of the California Public Utilities Commission, WC Docket No. 08-225 (filed Sept. 11, 2009); Comments of General Communication, Inc., WC Docket No. 08-225 (filed Sept. 11, 2009). Despite nearly universal support for eliminating the Equal Access Scripting requirement, USTelecom's waiver petition remains pending before the Commission.

the narrowband comparably efficient interconnection (“CEI”) and open network architecture (“ONA”) requirements.⁴⁷

The Commission should now take the next logical step and forbear from applying to the BOCs the: (i) substantive CEI and ONA requirements; and (ii) the structural separation requirements contained in Section 64.702 of the Commission’s rules.⁴⁸ These requirements, which necessitate that a BOC must either adhere to the ONA and CEI regime or operate under structural separation as specified in Rule 64.702 in providing enhanced services, were adopted decades ago when the communications landscape bore no resemblance to today’s marketplace.⁴⁹

⁴⁷ See *Wireline Broadband Order*, ¶ 1; *Sprint Nextel Corp. v. FCC*, 508 F.3d 1129 (D.C. Cir. 2007); *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*; *Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*, Memorandum Opinion and Order, 22 FCC Rcd. 18705 (2007) (“*AT&T Enterprise Forbearance Order*”); *Petition of the Embarq Local Operating Companies for Forbearance under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common-Carriage Requirements*, Memorandum Opinion and Order, 22 FCC Rcd. 19478 (2007) (“*Embarq Enterprise Forbearance Order*”); *Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services*, Memorandum Opinion and Order, 23 FCC Rcd. 12260 (2008) (“*Qwest Enterprise Forbearance Order*”); *Review of Wireline Competition Bureau Data Practices; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, Notice of Proposed Rulemaking, 26 FCC Rcd. 1579, ¶ 1 (2011) (“*NPRM*”).

⁴⁸ See *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, Final Decision, 77 F.C.C.2d 384 (1980), *reconsidered*, Memorandum Opinion and Order, 84 F.C.C.2d 50 (1980), *further reconsidered*, Memorandum Opinion and Order on Further Reconsideration, 88 F.C.C.2d 512 (1981), *aff'd*, *Computer and Communications Indus. Ass'n. v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983) (“*Computer II*”).

⁴⁹ See *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, Report and Order, 14 FCC Rcd. 4289, 4308-09, ¶ 29 (1999); *see also* *Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry) and Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Thereof, Communications Protocols under Section 64.702 of the Commission's Rules and Regulations*, Report and Order, 104 F.C.C.2d 958 (1986) (“*Computer*

These requirements have no continued regulatory relevance and do nothing to protect consumers or promote competition.⁵⁰

The Commission's ONA requirements currently apply to narrowband enhanced services and require carriers to unbundle key elements of their basic services and make them available under tariff.⁵¹ The specific requirements applicable to ONA obligate carriers to: (i) establish procedures to ensure that they do not discriminate in their provision of ONA services;⁵² (ii) specify the Operations Support Systems ("OSS") they would offer enhanced service providers ("ESPs") and provide the same access to OSS services to its affiliated enhanced service

(footnote cont'd.)

III Phase I Order"), modified on reconsideration, Report and Order, 2 FCC Rcd.. 3035 (1987), further reconsidered, Memorandum Opinion and Order on Further Reconsideration, 3 FCC Rcd.. 1135 (1988), second further reconsideration, Memorandum Opinion and Order on Further Reconsideration and Second Further Reconsideration, 4 FCC Rcd.. 5927 (1989); see also Phase II, Report and Order, 2 FCC Rcd.. 3072 (1987), further reconsidered, 4 FCC Rcd.. 5927 (1989), rev'd in part, *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990), on remand, Report and Order, 6 FCC Rcd.. 7571 (1991), vacated in part and remanded, *California v. FCC*, 39 F.3d 919 (9th Cir. 1994); see also Notice of Proposed Rulemaking, *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, 10 FCC Rcd.. 8360 (1995).

⁵⁰ See, e.g., *Wireline Broadband Order*, ¶ 1 (eliminating *Computer Inquiry* requirements for wireline broadband Internet access services, noting that such "regulations were created over the past three decades under technological and marketplace conditions that differed greatly from those of today").

⁵¹ See *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, Notice of Proposed Rulemaking, 10 FCC Rcd.. 8360, ¶¶ 15-16 (1995); *Filing and Review of Opening Network Architecture Plans*, Memorandum Opinion and Order on Reconsideration, 5 FCC Rcd. 3084, ¶ 26 (1990).

⁵² See, e.g., *Computer III Further Remand Proceedings: Bell Operating Company Provision Of Enhanced Services, 1998 Biennial Regulatory Review - Review of Computer III and ONA Safeguards and Requirements*, Further Notice of Proposed Rulemaking, 13 FCC Rcd.. 6040, 6099-100, ¶ 112 (1998) ("*Computer III FNPRM 1998*").

operations that the carrier provides to unaffiliated ESPs;⁵³ and (iii) file nondiscrimination reports or annual affidavits demonstrating the nondiscriminatory service provided to unaffiliated ESPs.⁵⁴

The Commission's CEI requirements obligate BOCs to file a CEI plan in which they describe how they intend to comply with the "equal access" parameters for the specific enhanced or information services they intend to offer. This plan must include: interface functionality; unbundling of basic services; resale; technical characteristics; installation, maintenance and repair; end user access; CEI availability; minimization of transport costs; and availability to all interested customers or ESPs.⁵⁵

Under Rule 64.702, a BOC may provide enhanced services if: (i) it does so through a separate corporate entity that obtains all telecommunications facilities and services pursuant to tariff and may not own its own telecommunications facilities; (ii) the separate subsidiary operates independently in the furnishing of enhanced services and customer premises equipment; (iii) the separate subsidiary deals with any affiliated manufacturer on an arm's length basis; (iv) any joint research and development must be done on a compensatory basis; and (v) all

⁵³ *Filing and Review of Open Network Architecture Plans, Phase I*, Memorandum Opinion and Order, 4 FCC Rcd. 1, 12, 17-18, 59, ¶¶ 4, 17 & 110 (1988).

⁵⁴ *Computer III FNPRM 1998*, 13 FCC Rcd. at 6100, ¶ 113. In August 2011, the Wireline Competition Bureau granted a temporary waiver of the narrowband BOC-specific CEI and ONA reporting requirements. *Review of Wireline Competition Bureau Data Practices; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements*, Order, 26 FCC Rcd. 11280 (2011).

⁵⁵ *Bell Operating Companies Joint Petition for Waiver of Computer III Rules*, Order, 10 FCC Rcd. 13758, ¶ 35 (1995).

transactions between the separate subsidiary and the carrier or its affiliates must be reduced to writing.⁵⁶

In proposing to eliminate the outdated and meaningless narrowband reporting obligations associated with the CEI and ONA requirements, the Commission recognized that these reports suffer from a “lack of continuing relevance and utility.”⁵⁷ The same is true for the substantive CEI and ONA requirements and the structural separation rule, to which only the BOCs and none of their competitors remain subject and which have no utility whatsoever in today’s marketplace.

Because it also has no place in today’s telecommunications world, the Commission should also forbear from applying to all covered carriers the legacy all-carrier *Computer Inquiry* rule. In the *Second Computer Inquiry*, the Commission concluded that all wireline carriers that own common carrier transmission facilities and provide enhanced services must “acquire transmission capacity pursuant to the same prices, terms, and conditions reflected in their tariffs when their own facilities are utilized. Other offerors of enhanced services would likewise be able to use such a carrier’s facilities under the same terms and conditions.”⁵⁸

Forbearance from the remaining ONA and CEI requirements, the structural separation rule, and the all-carrier rule is warranted because they are unnecessary to ensure just, reasonable,

⁵⁶ 47 C.F.R. 64.702(c)(1)-(5). The Commission’s rules also provide that carriers electing to provide enhanced services through a separate subsidiary: (i) cannot engage in the sale or promotion of the enhanced services or customer premises equipment on behalf of the separate enhanced services subsidiary; (ii) cannot provide to its separate enhanced services subsidiary computer services that are used in any way for the provision of its common carrier services; (iii) must publicly disclose certain network design and technical standards; and (iv) must obtain Commission approval of the carrier’s capitalization plan for the separate corporation. 47 C.F.R. 64.702(d)(1), (2) & (4).

⁵⁷ *NPRM*, 26 FCC Rcd. 1579, ¶ 1; see also *2010 Biennial Review Public Notice*, at 3 (recommending “that the Commission consider repealing or modifying the CEI/ONA rules ...”)

⁵⁸ *Computer II*, 77 F.C.C.2d 384 ¶ 231.

and nondiscriminatory rates and to protect consumers. These requirements were intended to address perceived competitive harms associated with the fact that, at the time, telephone networks were the “primary, if not sole, facilities-based platform available for the provision of ‘information services’ to customers,” and the entire *Computer Inquiry* regime was based on the “implicit, if not explicit, assumption that the incumbent LEC wireline platform would remain the only network platform available to enhanced service providers.”⁵⁹

By contrast, in today’s vibrantly competitive marketplace, the telephone network is rarely used by customers to reach information service providers using traditional dial-up service. Instead, residential and business customers increasingly rely upon broadband services offered by a host of competitors—including wireless and wireline providers. Continuing to subject the BOCs to the last vestiges of the anachronistic CEI and ONA requirements and the Commission’s structural separation rule, and continuing to subject other wireline carriers to the legacy all-carrier rule, serves no regulatory purpose.

Rather than protecting consumers, these obligations harm competition and disserve the public interest. The Commission has correctly observed that the *Computer Inquiry* requirements “impede the development and deployment of innovative wireline broadband Internet access technologies and services” because “vendors do not create technologies with the *Computer Inquiry* requirements in mind.” *Wireline Broadband Order*, ¶ 65. The Commission concluded that the *Computer Inquiry* requirements compelled wireline carriers when deploying advanced

⁵⁹ *Wireline Broadband Order* ¶ 3; see also *id.* ¶ 47 (the *Computer Inquiry* rules were premised on the presence of a “single platform capable of delivering [enhanced] services ... and only a single facilities-based provider of that platform.”); *Computer III FNPRM 1998*, ¶ 43; see also *id.* ¶ 9 (“one of the Commission’s main objectives in the *Computer III* and ONA proceedings has been to ... prevent[] the BOCs from using their local exchange market power to engage in improper cost allocation and unlawful discrimination against” providers of information services).

network equipment to either “decide not to use all the equipment’s capabilities” or “defer deployment” while the equipment was re-engineered “to facilitate compliance with the *Computer Inquiry* rules” – which, according to the Commission, were “less-than-optimal” outcomes, since they reduced “operational efficiency” and created “unnecessary costs and service delays.” *Id.*⁶⁰ The Commission also has recognized the costs and burdens associated with structural separation requirements – costs and burdens that negatively affect carriers and their customers.⁶¹

Forbearance from the remaining ONA and CEI requirements, the Commission’s structural separation rule, and the all-carrier rule is in the public interest because, rather than promoting competition, these requirements increase carriers’ costs of providing information

⁶⁰ The Commission reached similar conclusions in granting forbearance from the application of *Computer Inquiry* requirements to enterprise broadband services. *See, e.g., AT&T Enterprise Forbearance Order*, ¶¶ 54 & 56 (continued application of the *Computer Inquiry* requirements to enterprise broadband services “constrains AT&T’s ability to respond to technological advances and customer needs in an efficient, effective, or timely manner” because enterprise customers have “individualized needs” that AT&T must be able to meet through “innovative service arrangements that make full use of its networks’ telecommunications and information service capabilities”); *Qwest Enterprise Forbearance Order*, ¶¶ 55 & 57 (noting that eliminating the *Computer Inquiry* requirements “should benefit potential enterprise customers by giving them increased opportunities to obtain integrated service packages that meet their needs”).

⁶¹ *See Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission’s Rules; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket Nos. 02-112, 06-120, CC Docket No. 00-175, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd. 16440, 16481 ¶ 84 (2007); *Computer III Phase I Order*, 104 FCC 2d at 964, ¶ 3 (abolishing structural separation requirement upon a finding that targeted nonstructural requirements were sufficient to address discrimination and cross-subsidization concerns); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Fifth Report and Order, 98 FCC 2d 1191, 1197-98 ¶ 8 (1984) (determining that “[w]hile structural separation decreases opportunities for cost-shifting and anticompetitive conduct, it can also decrease efficiency and affect the interexchange carrier’s ability to compete”).

services – costs not borne by other competitors.⁶² Furthermore, demand for ONA services has been practically nonexistent, which only exacerbates the wasted resources that carriers must devote to continued compliance with ONA and CEI requirements.⁶³ The competitive distortions resulting from ONA and CEI requirements, the structural separation rule, and the all-carrier rule harm consumers.⁶⁴

According to the Commission, one of its “most critical functions is to adapt regulation to changing technology and competitive conditions to accomplish its mandates under the Act.” *Wireline Broadband Order*, ¶ 42. With the explosive growth in broadband services and the increased deployment of IP networks, the ONA and CEI requirements, structural separation rule, and the all-carrier rule simply do not “make common sense in light of current technological, market, and legal conditions.” *Computer III FNPRM 1998*, ¶ 1. Under the circumstances, the Commission should forbear from enforcement of these obligations that have no applicability in today’s communications marketplace.

C. Cost Assignment Rules

USTelecom seeks forbearance for all price cap carriers not previously granted forbearance from the Commission’s Cost Assignment Rules and associated reporting

⁶² See *NPRM* ¶ 8 (noting industry consensus that the ONA/CEI reporting requirements serve no purpose); *id.* ¶ 9 (noting that no commenter had identified any utility to the ONA and CEI reports); *id.* (acknowledging that “the Commission does not rely on any of these submissions in the course of its decision making”).

⁶³ See, e.g., Comments of the United States Telecom Association, WC Docket 06-157, at 17-19 (filed Sept. 1, 2006) (noting limited requests for ONA services).

⁶⁴ *Wireline Broadband Order*, ¶ 79 (“Requiring a single type of broadband platform provider (*i.e.*, wireline) to make available its transmission on a common carriage basis is neither necessary nor desirable to ensure that the statutory objectives are met.”).

requirements.⁶⁵ These rules generally govern the assignment or allocation of common costs and revenues by type of cost, type of service (regulated or non-regulated), jurisdiction (intrastate or interstate), and service categories. These rules also include the Commission's affiliate transactions accounting and reporting rules.⁶⁶

The Cost Assignment Rules are inextricably tied to rate-of-return regulation and have no continued regulatory relevance to any price cap carrier. Furthermore, by virtue of having granted forbearance from the Cost Assignment Rules to AT&T, Verizon, and Qwest, the Commission already has determined that forbearance from these rules satisfies the three-prong test in Section 10. Indeed, in relieving AT&T, Verizon, and Qwest of the continued obligation to comply with the Cost Assignment Rules, the Commission invited similarly situated LECs "to seek comparable forbearance relief." *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd. at 7307, ¶ 16. USTelecom accepts this invitation and seeks forbearance from the Cost Assignment Rules for all price cap carriers.

⁶⁵ See *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd. 7302 (granting forbearance from the Cost Assignment Rules to AT&T and BellSouth subject to conditions); *ARMIS Forbearance Order*, 23 FCC Rcd. 13647, ¶ 23 (extending forbearance from Cost Assignment Rules to Qwest and Verizon subject to conditions). USTelecom uses the term "Cost Assignment Rules" to refer collectively to the same statutory provisions and Commission rules from which AT&T requested and the Commission granted forbearance. *AT&T Cost Assignment Forbearance Order*, ¶ 1, n.2 (citing Attachment 1 of the AT&T Petition). Consistent with Commission precedent, USTelecom requests relief from the Cost Assignment Rules as a group because they are intended to work together to achieve a unified goal. See *id.*, 23 FCC Rcd. at 7308, ¶ 12 ("Although AT&T seeks relief from section 220(a)(2) and a significant number of rules, we consider the Cost Assignment Rules together as a group under the statutory forbearance criteria because, as the Commission has concluded, the various accounting rules were intended to work together to help ensure the primary statutory goal of just and reasonable rates."); *ARMIS Forbearance Order*, 23 FCC Rcd. at 13663, n.82. The specific statutory and regulatory provisions from which USTelecom seeks forbearance are listed in Appendix A.

⁶⁶ See 47 C.F.R. §§ 32.27, 43.21, 64.902—64.904.

The Commission's logic in forbearing from application of the Cost Assignment Rules to the BOCs compels forbearance here. As the Commission explained in the *AT&T Cost Assignment Forbearance Order*, "[b]ecause its interstate rates are now generally regulated under price caps, we agree with AT&T that the Cost Assignment Rules are unnecessary in determining whether its rates are just, reasonable, and not unjustly or unreasonably discriminatory." *Id.* According to the Commission,

The Cost Assignment Rules were developed in a time when the incumbent LECs' interstate rates and many of their intrastate rates were set under rate-based, cost-of-service regulation ... Since that time, however, our ratemaking methods and those of our state counterparts have evolved considerably. As the Commission has recognized, this evolution has greatly reduced incumbent LECs' incentives to overstate the costs of their tariffed telecommunications services. As the Commission has explained, '[B]ecause price cap regulation severs the direct link between regulated costs and prices, a carrier is not able automatically to recoup misallocated non-regulated costs by raising basic service rates, thus reducing the incentive for the BOCs to shift non-regulated costs to regulated services.'

Id., 23 FCC Red at 7311 ¶ 17 (internal citations omitted).

The Commission's reasoning applies equally to all price cap carriers, and not just to the BOCs. Once a carrier has transitioned to price cap regulation, the Cost Assignment Rules serve no continuing purpose in assuring just and reasonable rates. To the contrary, following forbearance, the rates of price cap carriers would remain subject to price cap regulation, which will "continue to protect consumers from unjust, unreasonable, and unjustly or unreasonably discriminatory charges, practices, classification and regulations." *Id.*, ¶ 18.

In finding that the Cost Assignment Rules were unnecessary to protect consumers, the Commission also determined that these rules served "no current, federal need" under the conditions mandated in the *AT&T Cost Assignment Forbearance Order*, imposed "costs that outweigh their benefits," and distorted the competitive market by diverting "resources that would

otherwise be directed to ‘positive activities that generate consumer benefit.’” *Id.*, ¶ 36 (quoting AT&T Petition). The Commission’s conclusion that the Cost Assignment Rules “hinder consumer welfare” applies with equal force to all price cap carriers.

Finally, in granting forbearance from the Cost Assignment Rules to AT&T, Verizon, and Qwest, the Commission found that forbearance was in the public interest because it would: (1) “result in substantial cost savings”; (2) permit carriers “to compete more effectively with [their] rivals both by freeing [them] from unnecessary regulations to which [their] nondominant competitors are not subject and freeing capital for investments”; and (3) “enhance competition among providers of telecommunications.” *Id.*, ¶¶ 41-44. These same public interest benefits would result from the Commission’s granting forbearance from the Cost Assignment Rules to all price cap carriers.

The Commission’s Cost Assignment Rules are extraordinarily complex and inherently burdensome. Yet this complexity and these burdens currently impact only small and mid-size independent ILECs – each of which is today just one among many competitors in the marketplace. The end result distorts competition by handicapping only a subset of competitors to the detriment of those companies and their customers. The Commission cannot and should not continue to maintain rules that are demonstrably unnecessary to ensure just and reasonable rates or protect consumers and whose elimination would advance the public interest.

Accordingly, the Commission must grant forbearance from further application of the Cost Assignment Rules to all price cap carriers.

D. Part 32 Uniform System of Accounts (47 U.S.C. § 220(a)(2), 47 C.F.R. §§ 32.1 – 32.9000).

USTelecom also seeks forbearance for all price cap regulated carriers from the Part 32 Uniform System of Accounts (USOA). The basis for forbearance is the same as explained above

in connection with the Cost Assignment Rules generally: there is no clear use for or relevance to the Part 32 information being collected; Part 32 imposes requirements that in some cases duplicate and in other cases conflict with GAAP; and Part 32 distorts competition by being applicable only to one subset of service providers. The Commission should seize this opportunity to eliminate these rules as a part of the President's and the Chairman's initiative to eliminate "outmoded" and "excessively burdensome" regulations.

Under the Commission's Part 32 rules, ILECs record their costs and revenues in the USOA.⁶⁷ As the Commission has acknowledged, the Part 32 USOA requirements were adopted "to record company investment, expense, cost and revenue for rate- of-return rate regulation."⁶⁸

By virtue of Part 32, ILECs must maintain two separate sets of accounting records: the "regulatory books" mandated by Part 32 and the real "financial books" prepared in accordance

⁶⁷ 47 C.F.R. Part 32. The Part 32 USOA replaced the USOA in Parts 31 and 33 of the Commission's Rules, which were originally adopted in 1935. *See, e.g., Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone Companies (Parts 31, 33, 42, and 43 of the FCC's Rules)*, Report and Order, FCC 86-221 (rel. May 15, 1986). The Commission adopted Part 32 in order to comply with Section 220(a)(2) of the Communications Act, which requires the Commission to "prescribe a uniform system of accounts for use by telephone companies." 47 U.S.C. § 220(a)(2). As set forth in Appendix A, USTelecom's Petition seeks forbearance from Part 32 as well as Section 220(a)(2). For price cap carriers, this forbearance would also render moot the Responsible Accounting Officer (RAO) Letters that the Commission has issued to provide accounting guidance and interpretations of Part 32.

⁶⁸ *AT&T Cost Assignment Forbearance Order*, ¶ 3; *see also 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting*, Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 19911, 19916 (¶ 8) (2001) ("Part 32 originated at a time when regulators were required or inclined to organize telecommunications costs in a manner that allowed a logical mapping of these costs to telecommunications rate structures") ("2000 Biennial Review Order").

with GAAP.⁶⁹ While an ILEC's financial books are provided to investors and the SEC, the "regulatory books" that price cap carriers are required to produce are like an outdated paperback on a dusty library shelf – never checked or read. In fact, since the Commission granted the BOCs forbearance from the Cost Assignment Rules in 2008, it has not had any need to request any financial information the BOCs were required to maintain as a condition to forbearance.

In granting the cost assignment relief to the BOCs the Commission relied in part on the continued operation of the Part 32 accounts. In the *2010 Biennial Review Public Notice*, Commission staff stated that "in granting AT&T, Verizon, and Qwest forbearance from the cost-assignment rules, the Commission did not grant forbearance from Part 32" *Id.* at 4. While true, this statement overlooks that the BOCs *did not request* forbearance from Part 32 in their request for forbearance from the Cost Assignment Rules; thus the Commission has not previously considered whether forbearance from Part 32 for price cap carriers satisfies the criteria of Section 10. *See, e.g., AT&T Cost Assignment Forbearance Order*, ¶ 12. Likewise, the Commission's observation that, upon forbearance from the Cost Assignment Rules, revenue data by USOA account would "continue to be maintained and available to the Commission on request" does not impact the Commission's Section 10 analysis. *Id.*, ¶ 21. First, the *AT&T Cost Assignment Forbearance Order* did not identify any current, federal need for Part 32 data. Second, although conditioning forbearance from the Cost Assignment Rules on the BOCs' filing

⁶⁹ *See, e.g., 1998 Biennial Regulatory Review – Review of Depreciation Requirements for Incumbent Local Exchange Carriers; United States Telephone Association's Petition for Forbearance from Depreciation Regulation of Price Cap Local Exchange Carriers*, Report and Order and Memorandum, Opinion and Order, 15 FCC Rcd. 242, 253, n.71 (¶ 25) (1999).

of a general compliance plan, the Commission did not specifically require that the compliance plan include Part 32 USOA data. *See id.*, ¶ 31.

Moreover, earlier reliance on continuing Part 32 account data and the BOCs' related 2008 compliance plans was merely a back-stop. At that time the Commission was considering comprehensive reform of the universal service and intercarrier compensation systems and did not know what data may have continued relevance in the new regimes. But those questions have now been answered. The *Universal Service Reform Order* was approved more than three months ago, and those reforms do not depend on Part 32 data with respect to price cap carriers. In addition, in the more than three years since the Commission granted the BOCs forbearance from the Cost Assignment Rules the Commission has never once requested any of the data that is still maintained pursuant to the compliance plans – because this information is as useless today as it was three years ago.

In short, because Part 32 requirements serve no regulatory purpose, it is impossible to reconcile their continued application to price cap carriers with the plain language of section 10.

First, Part 32 requirements are unnecessary to ensure that price cap carriers charge just, reasonable, and nondiscriminatory rates. In fact, Part 32 has no bearing on the rates charged by price cap carriers. When originally adopted more than 25 years ago, the Part 32 USOA were intended to deter “cost misallocations by providing the initial information needed to identify cross-subsidization,” which, according to the Commission, “protects regulated services from bearing the costs of an incumbent LEC’s competitive operations.”⁷⁰ However, as the Commission recognized in 2008 when granting the BOCs forbearance from the Cost Assignment

⁷⁰ See *Federal Communications Commission Issues Biennial Regulatory Review Report for the Year 2000*, CC Docket No. 00-75, 2001 FCC LEXIS 378, at 71 (2001) (“*2000 Biennial Review Regulatory Report*”).

Rules, by “sever[ing] the direct link between regulated costs and prices,” price cap regulation reduces a carrier’s incentive “to shift non-regulated costs to regulated services”; to the extent such incentives remain, moreover, continued regulation of a price cap carrier’s rates will adequately “protect consumers from unjust, unreasonable, and unjustly or unreasonably discriminatory charges, practices, classification and regulations.” *AT&T Cost Assignment Forbearance Order*, ¶¶ 17-18 (citations omitted). The same is true for Part 32.

Part 32 accounting data historically were used for cost allocation procedures under Part 64 and for jurisdictional separations purposes under Part 36. *2000 Biennial Review Order*, ¶ 10. However, the Commission has granted forbearance to the BOCs from Part 64 cost allocation requirements and Part 36 jurisdictional separations and, as explained above, is compelled to extend the same relief to all price cap carriers. *Cf. 2010 Biennial Review Notice* at 2 (expressing belief of Commission staff “that rules in Part 36, in their current form, may not be necessary in the public interest ...”). Furthermore, whatever relevance Part 32 accounting data may have had under Part 36 has long since evaporated given that the jurisdictional separation factors for price cap carriers have been frozen for more than a decade.⁷¹

⁷¹ See *Jurisdictional Separations and Referral to the Federal-State Joint Board*, Report and Order, 16 FCC Rcd. 11382, 11386 (¶ 9) (2001) (ordering freeze of jurisdictional separations factors for a five-year period beginning July 1, 2001, or until the Commission completed comprehensive separations reform, whichever came first). In 2006, the Commission extended the freeze for three years or until comprehensive reform could be completed, whichever came first. See *Jurisdictional Separations and Referral to the Federal-State Joint Board*, Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd. 5516, 5523 (¶ 16) (2006). The freeze subsequently was extended in 2009, in 2010, and again in 2011. See *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd. 6162 (2009); (extending the separations freeze until June 30, 2010); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, Report and Order, 25 FCC Rcd. 6046, 6049 (¶ 11) (2010) (extending the separations freeze until June 30, 2011); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, Report and Order, 26 FCC Rcd. 7133 (2011) (extending separations freeze until June 30, 2012).

Data reported in Part 32 accounts also were used historically to determine interstate access charges (for example, when price cap carriers sought exogenous adjustments based on actual cost changes) as well as to calculate high cost support under the Universal Service program. *2000 Biennial Review Order*, ¶¶ 11-12. However, because “ongoing tinkering with price caps” has been “eliminated,” Part 32 accounting data is no longer needed for “rate regulation functions.” *See AT&T Cost Assignment Forbearance Order*, ¶ 19. Furthermore, (as discussed above), as a result of the recent reforms adopted by the Commission, intercarrier compensation will migrate to bill and keep, and high cost universal service support for broadband will “rely upon incentive-based, market-driven policies, including competitive bidding,” which obviates any purported need for Part 32 data for universal service purposes. *See, e.g., Universal Service Reform Order*, ¶¶ 20, 34.⁷²

The other regulatory justification historically offered for the Part 32 USOA is that Part 32 data “[w]ork[ed] in tandem with the Part 43 reporting requirements ... to gather information about the financial performance of large incumbent LECs.” *2000 Biennial Review Regulatory Report* at 71. However, as noted below, the Commission largely has eliminated Part 43 reporting

⁷² Price cap carriers’ continued compliance with Part 32 is not required to achieve the Commission’s universal service and intercarrier compensation reform goals, as Part 32 plays practically no role under the Commission’s new regime. Although the Commission required an ILEC that has been negatively impacted by its reforms to submit information by “Part 32 account” when seeking a waiver, the waiver process is more geared toward rate-of-return carriers. *Universal Service Reform Order* ¶ 542. And, in the event any price cap carrier intends to file a waiver petition, it could voluntarily maintain its accounts in accordance with Part 32 in order to satisfy the Commission’s waiver requirements, notwithstanding the grant of forbearance from any continued obligation to comply with Part 32. Furthermore, while the Commission relied upon Part 32 in explaining that its new disclosure requirements would “impose minimal new burdens,” *id.* ¶ 601, the disclosure requirements at issue apply to rate-of-return carriers, not price cap carriers.

requirements and must grant forbearance from the limited Part 43 reporting requirements that remain.

Second, continued enforcement of the Part 32 USOA is not necessary to protect consumers. As noted above, Part 32 does not protect consumers because these accounting requirements serve no regulatory purpose for price cap carriers. Rather, consumers are adequately protected by GAAP, Sarbanes-Oxley, the Federal Corrupt Practices Act, and other accounting safeguards to which price cap carriers will remain subject.

In fact, the archaic Part 32 requirements harm consumers by imposing unnecessary costs on price cap carriers – costs that are hardly benign.⁷³ Price cap carriers collectively incur millions of dollars in maintaining two separate sets of books – costs that continue to grow with the expanding divergence between Part 32 rules, developed more than 25 years ago, and the ever changing modern accounting techniques under GAAP. For example, public companies long ago moved to unit-based accounting to address each asset of the company. By contrast, Part 32 utilizes group accounting by which large groups of assets are lumped together. While Part 32's system of detailed categorization of assets into arbitrary groups may have served its purpose when regulating rate-of-return carriers, it is now merely a costly and cumbersome anachronism. The same is true for the depreciation schedules under Part 32, which vary considerably from those developed for GAAP purposes and which add complexity and unnecessary costs to the accounting records maintained by price cap carriers. Finally, unlike GAAP and other leading accounting standards, Part 32 has no materiality standard, forcing carriers to justify every

⁷³ See, e.g., *2000 Biennial Review Regulatory Report*, at 70 (acknowledging that “Part 32 may impose more burdensome information requirements on incumbent LECs than needed in the changing and competitive landscape” by establishing unnecessary “record-keeping requirements and accounting procedures”).

accounting discrepancy, no matter how trivial and immaterial, which adds unnecessary costs to the preparation and audit of a carrier's accounting records.⁷⁴

Furthermore, with the prospect looming that public companies in the United States will be required to migrate from GAAP to the International Financial Reporting Standards (IFRS), the unnecessary costs associated with Part 32 compliance will only grow exponentially.⁷⁵ For example, Verizon is updating and modernizing its accounting software platform – a multi-million dollar expense – as it prepares for the eventual migration to IFRS. Although this modernization process provides an opportunity to make Verizon's accounting systems more efficient, absent forbearance, the company will be required to incur the capital expenses

⁷⁴ See 47 C.F.R. § 32.26 (requiring that ILECs adhere to the USOA “in recording all financial and statistical data irrespective of an individual item's materiality under GAAP ...”). As has been previously explained to the Commission, materiality is an established, well-developed accounting concept that allows accountants and auditors to focus on meaningful entries or errors and to make a qualitative assessment of the importance of such entries or errors, from the perspective of the users of the statement at issue. See Letter from Deena Clausen, Ernst & Young, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No 05-532 (filed July 25, 2006). Having carriers rely upon GAAP and the concept of materiality would enable price cap carriers and their auditors to more efficiently prepare and audit the carrier's accounts. Indeed, in the context of the 2008 Biennial Review, the Wireline Competition Bureau staff recommended that the Commission consider eliminating Rule 32.26. See *Commission Releases 2008 Biennial Review of Telecommunications Regulations*, WC Docket No. 08-183, Public Notice, 25 FCC Rcd. 9041, 9043 (2010).

⁷⁵ See SEC, Work Plan for the Consideration of Incorporating International Financial Reporting Standards into the Financial Reporting System for U.S. Issuers A Comparison of U.S. GAAP and IFRS -- A Securities and Exchange Commission Staff Paper, at 1 (Nov. 16, 2011) (available at <http://sec.gov/spotlight/globalaccountingstandards/ifrs-work-plan-paper-111611-gaap.pdf>) (“The purpose of the Work Plan is to consider specific areas and factors relevant to a Commission determination as to whether, when, and how the current financial reporting system for U.S. issuers should be transitioned to a system incorporating International Financial Reporting Standards”); SEC, Work Plan for the Consideration of Incorporating International Financial Reporting Standards into the Financial Reporting System for U.S. Issuers An Analysis of IFRS in Practice -- A Securities and Exchange Commission Staff Paper (Nov. 16, 2011) (available at <http://sec.gov/spotlight/globalaccountingstandards/ifrs-work-plan-paper-111611-practice.pdf>).

associated with programming its new software platform to ensure compliance with the extensive Commission accounting requirements under Part 32.

A particularly cumbersome example of the unnecessary costs associated with continued application of Part 32 to price cap carriers is the Commission's requirement that price cap carriers seek prior approval of changes in a carrier's time sampling processes.⁷⁶ Statistical sampling techniques historically were used to record technician and marketing personnel expenses to the appropriate Part 32 accounts. As with the other Part 32 requirements, however, the data captured by the statistical sampling process no longer impacts rates of price cap carriers and otherwise serves no regulatory purpose. Nonetheless, for an ILEC that wants to modify the statistical sampling it uses for its own business purposes or that makes any systems upgrades that impact its Part 32 statistical sampling processes, the ILEC must incur the time and expense of securing Commission approval. Such an approach hardly benefits consumers.

Third, forbearance from Part 32 is in the public interest because it would eliminate unnecessary, costly, and inconsistent accounting requirements. As is the case with the Cost Assignment Rules generally, forbearance from Part 32 would allow price cap carriers to streamline their accounting systems and processes and avoid incurring unnecessary costs associated with accounting rules that serve no regulatory purpose and to which only a limited number of competitors are subject, which would serve the public interest.

That Part 32 information may conceivably provide the Commission with "potentially relevant data" in some future proceeding or may be helpful to "state commissions" cannot justify

⁷⁶ See, e.g., Letter from Albert M. Lewis, Chief, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission to Linda Vandeloop, Director, AT&T, 25 FCC Rcd. 13731 (2010); Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission to Timothy M. Boucher, Corporate Counsel, Qwest, 25 FCC Rcd. 2114 (2010).

continued compliance with the Part 32 USOA. *2010 Biennial Review Public Notice* at 4-5. As the Commission has made clear, in the absence of any “current, federal need” for particular regulatory requirements, “it would be beyond our authority to maintain” such requirements when “the section 10 criteria otherwise are met”⁷⁷ Because the criteria of Section 10 are met with respect to the Part 32 USOA, the Commission lacks the authority continue such requirements in effect for price cap carriers based solely upon some unspecified future federal need or a current state need for Part 32 data.

E. Property Record rules (47 C.F.R. §§ 32.2000(e), (f))

Regardless of whether the Commission forbears from applying its Part 32 to price cap carriers, the Commission should forbear from application to price cap carriers of its property record requirements in Section 32.2000(e) and (f) of the Commission’s rules. The basic property records consist of the continuing property records and all supplemental records necessary to provide the property record details required by the Commission. 47 C.F.R. § 32.2000(e)(3). Supplemental records include invoices, work orders, and engineering drawings that support the information in the continuing property records. These basic property records are part of the total property accounting system that is intended to preserve the identity, vintage, location, and original cost of property, as well as original and ongoing transactional data. 47 C.F.R. § 32.2000(e)(1). ILECs must ensure that their records are auditable, subject to effective internal accounting controls, and “maintained throughout the life of the property.” 47 C.F.R.

⁷⁷ See *AT&T Cost Assignment Forbearance Order* ¶ 32; see also *Qwest ARMIS Forbearance Order* ¶ 10 (granting forbearance from ARMIS Financial Reports when there was no “strong connection” between maintaining those reports “in anticipation of a speculative need for the information at some point in the future”).

§ 32.2000(e)(2). The Commission's rules also prescribe standards for establishing and maintaining continuing property records. 47 C.F.R. § 32.2000(f).

The Commission concluded more than a decade ago that it should eliminate its property record rules.⁷⁸ Consistent with that conclusion, the Commission must forbear from continued application of these unnecessary and burdensome requirements because the standards for forbearance under Section 10 have been satisfied.

First, continued enforcement of the Commission's property record rules is not necessary to ensure that rates or practices are just, reasonable, and nondiscriminatory. For price cap carriers, the rules serve no valid purpose, since they were developed under rate-of-return regulation.⁷⁹ Under price cap regulation, there is no need for a carrier to document the costs that make up its plant asset base to the extreme detail mandated by the Commission's rules. With rates no longer tied directly to regulated costs, requiring that price cap carriers maintain such detailed property records has no bearing on their rates.

Even for carriers that continue to operate under rate-of-return regulation, the Commission's property record rules are unnecessary to ensure just, reasonable, and nondiscriminatory rates. If the Commission were to grant forbearance of its property record rules, carriers would continue to be subject to other accounting safeguards, including GAAP. These safeguards are designed to protect assets from physical loss due to theft, deterioration,

⁷⁸ See *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2, etc.*, Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 19911, ¶ 212 (2001) (“[W]e tentatively conclude that we should eliminate our detailed [continuing property records] rules in three years”) (“*2000 Biennial Review Order*”).

⁷⁹ See, e.g., *Revision to amend Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies as it relates to the treatment of certain individual items of furniture and equipment costing \$500 or less*, Order, 3 FCC Rcd. 4464, ¶ 14 (1988).

destruction, misappropriation or misuse and to ensure that asset purchases, transfers, and retirements or dispositions are made in accordance with management's authorization and are properly valued in a company's financial records. These safeguards are sufficient to ensure that rates established under the Commission's rate-of-return regime are just, reasonable, and nondiscriminatory.⁸⁰

Second, for the same reasons, the Commission's property record rules are unnecessary to protect consumers in today's vibrantly competitive marketplace. In fact, these rules harm consumers by imposing unnecessary burdens on the carriers subject to such requirements.⁸¹

For example, under the Commission's rules, ILECs must maintain their continuing property records by subaccount for each accounting area of their operations, which is the smallest territory of the company for which accounting records of investment are maintained for all plant accounts within the area. 47 C.F.R. § 32.2000(f)(1)(i). ILECs also must ensure that the continuing property records contain detailed descriptions as to the location, date of placement into service, and original cost of plant assets, and the rules specify methods for determining the original cost of property record units. 47 C.F.R. § 32.2000(f)(2) & (3). In addition, the ILEC must provide a description of each property record unit, which "shall include the identification of the work under which constructed, the year of installation (unless not determinable ...), specific location of the property within each accounting area in such manner that it can be readily spot-checked for proof of physical existence, the accounting company's number or designation,

⁸⁰ 2000 Biennial Review Order, ¶ 212 (noting that ILECs "are subject to a number of other regulatory constraints and appear to have ample incentives to maintain a detailed inventory of their property," including, but not limited to, the Foreign Corrupt Practices Act).

⁸¹ *Id.* ("the record shows that our detailed [property record] requirements, which include rigid rules for recording property, impose substantial burdens on incumbent LECs").

and any other description used in connection with the determination of the original cost.”

47 C.F.R. § 32.2000 (f)(5).

The information that ILECs must maintain in order to comply with the Commission’s property records rules is voluminous. In effect, ILECs must preserve all documentation pertaining to an asset for the entire life of that asset, which in some instances can involve a lengthy period of time and an inordinate amount of data. Consumers are not protected by compelling carriers to keep property records beyond that required by GAAP, which is the standard with which companies in all other industries must comply.

Finally, forbearance from the property record rules is consistent with the public interest because – as is the case with the other rules that are the subject of USTelecom’s Petition – compliance requires an unnecessary investment of resources by only a few competitors among many, which distorts competition. For example, cable operators, VoIP providers, and wireless carriers are able to realize efficiency savings in the accounting and reporting process by utilizing packaged software systems that have been developed for general ledger and related feeder systems such as the fixed asset system. Unfortunately, such efficiencies and savings are diminished, if not eliminated, for ILECs, which must expend additional resources to customize systems to maintain the detailed information required by the Commission’s property records rules. Accordingly, forbearance from these rules is in the public interest.

That the Commission’s property record rules “largely serve the interests of state regulators” is not grounds for continued application of these rules. *2000 Biennial Review Order*, ¶ 212. As it correctly concluded in forbearing from the Cost Assignment Rules, the Commission lacks the authority “to maintain federal regulatory requirements that meet the three-prong

forbearance test with regard to interstate services in order to maintain regulatory burdens that may produce information helpful to state commissions for intrastate regulatory purposes only.”⁸²

The Commission’s property record rules do little more than require carriers to maintain detailed records in addition to those that must be maintained in accordance with GAAP. The Commission was right to conclude ten years ago that these rules should be eliminated, and now it is time to act upon that conclusion by granting forbearance from their continued application.

F. Part 42 Recordkeeping requirements (47 C.F.R. §§ 42.4, 42.5, 42.7, 42.10(a)).

The Commission should forbear from application to all carriers of the portions of Part 42 that refer to outdated technologies and impose inefficient recordkeeping and storage requirements. Specifically, USTelecom seeks forbearance from 47 C.F.R. § 42.4, which requires the maintenance of a physical master index of records at various carrier offices; 47 C.F.R. § 42.5, which addresses the preservation of reproductions of records; 47 C.F.R. § 42.7, which covers retention of records listed in the master index, and 47 C.F.R. § 42.10(a), which requires the public display of rate information by nondominant interexchange carriers in a physical location.

Forbearance is appropriate for each of these rules because they do nothing to ensure that a carrier’s rates and practices are just, reasonable, and nondiscriminatory, they are not otherwise necessary to protect consumers, and they do not serve the public interest. While it is important to maintain accurate records and to make sufficient information available to the Commission and the public, the rules in question refer to the maintenance of physical records or copies in obsolete formats. Furthermore, they place unnecessary burdens on carriers, many of which have implemented electronic recordkeeping and online communications systems for the benefit of the

⁸² *AT&T Cost Assignment Forbearance Order*, ¶ 32; see also *ARMIS Forbearance Order*, ¶ 31.

public that are more reliable, more widely available, and more readily accessible than the methods prescribed by Part 42.

Much of Part 42 was adopted in 1986, at a time when the state of electronic recordkeeping was very different and before the advent of the public Internet. Today, carriers have widely adopted electronic recordkeeping techniques that make the retention, organization, and presentation of records simpler, faster, and more reliable than was imaginable at the time these rules were adopted. In recognition of these technological advancements, Chairman Genachowski recently committed “to scour the Commission for opportunities to move processes from paper to digital, and act as quickly as we can to get the job done.”⁸³ In keeping with this commitment, the outdated Part 42 rules that are the subject of this Petition – which do not create any substantive duty to create records, and only relate to the mechanics of their preservation – are no longer necessary, and forbearance is appropriate.⁸⁴

1. Index of Records and Retention of Other Records (47 C.F.R. §§ 42.4, 42.7).

The Commission should forbear from application to all covered carriers of Sections 42.4 and 42.7 of its rules. Section 42.4 requires carriers to keep physical document indices available at specific locations, and thus prevents carriers from taking advantage of efficiencies made possible by electronic document management. Specifically, Section 42.4 provides that “each

⁸³ *Electronic Tariff Filing System (ETFS)*, WT Docket No. 10-141, Report and Order, 26 FCC Rcd. 8884 (2011) (Statement of Chairman Julius Genachowski).

⁸⁴ Commission staff has stated previously that Part 42 is intended to “ensur[e] the availability of carrier records needed by the Commission,” “aid enforcement of criminal statute by requiring the retention of telephone toll records,” and “giv[e] consumers access to information about the rates, terms, and conditions for domestic, interstate, interexchange service.” Wireline Competition Bureau Staff Report, *Biennial Regulatory Review 2004*, 20 FCC Rcd. 263, 283 (2005) (“WCB 2005 Staff Report”). However, these goals can readily be accomplished without mandating that a carrier use information storage techniques that are outdated and that do not reflect contemporary technology – as these rules do.

carrier shall maintain at its operating company headquarters a master index of records,” and that “[a]t each office of the carrier where records are kept or stored, the carrier shall arrange, file, and currently index the records on site so that they may be readily identified and made available to representatives of the Commission.” 47 C.F.R. § 42.4. Similarly, Section 42.7 specifies how long records listed in the index must be retained and when records must be added to the index. 47 C.F.R. § 42.7. Thus, forbearance from further enforcement of Section 42.4 would render Section 42.7 meaningless.

Requiring common carriers to maintain a physical document index that is unlikely to be of use to anyone does nothing to ensure just, reasonable, and nondiscriminatory rates or protect consumers. At a time when electronic recordkeeping is the norm – and when network-enabled storage systems and cloud computing make it possible to access records remotely and securely – mandates on “where” particular records are maintained are pointless.

Forbearance from these rules would be in the public interest. It would eliminate an unnecessary and burdensome obligation, particularly considering the sheer number of records that are created by telecommunications carriers as they continue to roll out new and innovative services in today’s robustly competitive marketplace. It also would allow carriers to rely upon electronic media and the Internet to store and make available records, which would be consistent with the Chairman’s digital initiative.

2. Preparation and Preservation of Reproductions of Original Records (47 C.F.R. § 42.5).

The Commission also should forbear from application to all carriers of Section 42.5, which addresses the preparation and preservation of reproductions of original records, such as through the creation of microfilm, as well as situations in which records were initially prepared in a “machine-readable medium such as punched cards, magnetic tapes, and disks.” In this latter

case, the rule requires that “[e]ach record kept in a machine-readable medium shall be accompanied by a statement clearly indicating the type of data included in the record and certifying that the information contained in it has been accurately duplicated.” 47 C.F.R. § 42.5.

Today, the vast majority of records and reproductions are created in a “machine-readable medium.” By its terms, Section 42.5 requires a separate detailed certification with every machine-readable record, which would have to be individually executed by an employee duplicating the record. No valid regulatory purpose is served by this rule, which does nothing to ensure just, reasonable, and nondiscriminatory rates or to protect consumers. The only consequences of such requirements are to create burdensome and unnecessary recordkeeping requirements and waste carrier resources, which is hardly in the public interest.

3. Public Availability of Information Concerning Interexchange Services (47 C.F.R. § 42.10).

Finally, the Commission should forbear from the application to all covered carriers of Section 42.10(a), which requires the maintenance of redundant records by nondominant interexchange carriers regarding the rates, terms, and conditions of their services. Section 42.10 provides:

(a) A nondominant interexchange carrier (IXC) shall make available to any member of the public, in at least one location, during regular business hours, information concerning its current rates, terms and conditions for all of its international and interstate, domestic, interexchange services. Such information shall be made available in an easy to understand format and in a timely manner. Following an inquiry or complaint from the public concerning rates, terms and conditions for such services, a carrier shall specify that such information is available and the manner in which the public may obtain the information.

(b) In addition, a nondominant IXC that maintains an Internet website shall make such rate and service information specified in paragraph (a) of this section available on-line at its Internet website in a timely and easily accessible manner, and shall update this information regularly.

Under this rule, nondominant IXC's – which, by definition, are subject to competition and have no market power to control prices – must keep a physical, hard copy of information concerning rates, terms and conditions, *in addition* to the information they make available on the Internet. This requirement is redundant and unnecessary.

All IXC's have websites through which they provide service information to consumers, which is a considerably more convenient means for consumers to access information regarding rates, terms, and conditions of service. Even assuming that a customer does not have Internet access at his or her home or office and is aware that a hard copy of the rates, terms, and conditions of service is available, it is difficult to imagine a customer taking the time to travel to an IXC's public reading room to view such information. Instead, the customer likely would access the Internet at a local library or other venue to access this information or call the IXC requesting a copy.

The redundant requirements in Rule 42.10(a) are not necessary to ensure just, reasonable, and nondiscriminatory rates or to protect consumers. Requiring that IXC's maintain a hard copy of the terms of their service for public viewing provides no additional transparency or accountability when the same information is available online. Furthermore, there are numerous competitors offering long distance services – including cable operators, VoIP providers, and wireless carriers – that are not subject to these duplicative recordkeeping requirements. Thus, forbearing from Rule 42.10(a) would be in the public interest by eliminating obligations that only apply to a subset of long distance service providers.

G. ARMIS Report 43-01

Consistent with its efforts to eliminate unnecessary ARMIS reporting obligations, for those mid-sized ILECs that are still required to file ARMIS Report 43-01, the “Annual Summary Report,” the Commission should forbear from this filing requirement. Since 2008, the

Commission has granted conditional forbearance to all carriers from ARMIS Reports 43-05, 43-06, 43-07, and 43-08 (in part), relieved AT&T, Verizon and Qwest from filing ARMIS Reports 43-04, 495A, and 495B, subject to the Wireline Competition Bureau's approval of a compliance plan, and granted forbearance from the requirement that AT&T, Qwest, and Verizon file ARMIS Reports 43-01, 43-02, 43-03, although these three carriers must continue to file pole attachment data annually, formerly filed on ARMIS Report 43-01.⁸⁵

Under the current ARMIS reporting regime, no ARMIS reports are required of companies with annual revenue below the current threshold of \$142 million. Thus, the only carriers that remain subject to the Report 43-01 filing requirement are mid-sized ILECs (holding companies with annual revenues less than \$8.428 billion), which continue to file a reduced version of this report. For the same reasons that the Commission granted forbearance to the BOCs from the obligation to file ARMIS Report 43-01, and subject to the same conditions as adopted in the *Qwest ARMIS Forbearance Order*, the Commission should forbear from applying to any price cap carrier the obligation to file Report 43-01.

The Commission's logic in forbearing from requiring that AT&T, Verizon, and Qwest file Report 43-01 extends to the mid-sized ILECs. Report 43-01 lists revenue, revenue requirement, and demand data, which mid-sized LECs must provide annually by study area. The ARMIS financial data reports were originally established in 1987 after the breakup of the Bell system when rate-of-return was the predominant regulatory structure, and the "primary purpose" of these reports, according to the Commission, was "to facilitate the timely and efficient analysis

⁸⁵ See *AT&T Cost Assignment Order*; *ARMIS Forbearance Order*; *Qwest ARMIS Forbearance Order*. In late 2008, the Bureau approved the compliance plans submitted by AT&T, Verizon, and Qwest. Public Notice, Wireline Competition Bureau Approves Compliance Plans, DA 08-2827 (Dec. 31, 2008).

of revenue requirements and rates of return.”⁸⁶ For the mid-sized ILECs regulated under price caps, however, ARMIS Report 43-01 is unnecessary in determining whether the carrier’s rates are just, reasonable, and nondiscriminatory, and price cap regulation of that carrier’s rates will remain in place to protect consumers. *Qwest ARMIS Forbearance Order*, ¶ 10.

Likewise, as the Commission concluded with respect to the BOCs, there are sufficient sources of necessary data other than the ARMIS reports that provide accounting information that may be needed by the Commission. *Id.*, ¶ 12. To the extent that accounting data may in the future be necessary to protect consumers, the Commission retains ample authority to require that price cap carriers provide such data on request.

Finally, forbearance from requiring mid-sized ILECs to continue filing ARMIS Report 43-01 is in the public interest because it “provides greater flexibility and lessens the ongoing administrative costs and burdens” imposed on carriers and the Commission alike. *Id.*, ¶ 16. Continuing to require that only mid-size ILECs file ARMIS Report 43-01 also would serve no valid regulatory purpose, which is not in the public interest. As the Commission noted in relieving the BOCs of the obligation to file ARMIS Report 43-01, the report “generally no longer contain[s] data that would serve a current, federal need,” and thus there is “no countervailing public interest benefits to retaining [this] requirement.”⁸⁷

⁸⁶ *Qwest ARMIS Forbearance Order*, ¶ 2 (citing *Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC’s Rules)*, CC Docket No. 86-182, Report and Order, 2 FCC Rcd. 5770 ¶ 1 (1987)).

⁸⁷ *Qwest ARMIS Forbearance Order*, ¶ 16; see also *2010 Biennial Review Public Notice* at 2 (expressing Commission staff belief “that the rules relating to ARMIS reporting in Part 43 may not be necessary in the public interest ...”).

H. Annual Revenue and Total Communications Plant Reporting requirement (47 C.F.R. § 43.21(c)).

The Commission should forbear from application to all covered carriers of Section 43.21(c), which requires common carriers that exceed a specified revenue threshold to file with the Chief of the “Common Carrier Bureau” a letter reflecting its operating revenues for that year and the value of its total communications plant at the end of the year. 47 C.F.R. § 43.21(c). Section 43.21(c) is a holdover monopoly-era requirement that predates the 1984 break-up of the Bell System.⁸⁸ That Section 43.21(c) is outdated is apparent on the face of the rule, which, in addition to referring to the “Common Carrier Bureau,” cross-references a Commission rule that no longer exists. *See* 47 C.F.R. § 43.21(c) (referring to former Section 21.2 of the Commission’s rules). This antiquated regulation has outlasted its usefulness and should be eliminated, particularly when the information required under the rule is available elsewhere.

The information regarding annual operating revenues and total communications plant value mandated by Section 43.21(c) is not necessary to ensure that carrier charges, practices, or classifications are just and reasonable. With the transition from rate-of-return regulation to price cap regulation, financial information regarding a carrier’s revenues and costs has no relevance to rates. *See, e.g., Qwest ARMIS Forbearance Order*, ¶ 11 (forbearing from requirement to file ARMIS Financial Reports that “reflect only aggregated or otherwise redundant or piecemeal collections of data that, by themselves, are no longer necessary [to ensure just, reasonable and nondiscriminatory rates]”).

⁸⁸ *See Elimination of Annual Report of Miscellaneous Common Carriers (Form P)*, CC Docket No. 83-1291, 49 Fed. Reg. 10121 (1984) (“*Form P Elimination Order*”). The operating revenue and total plant reporting information currently required under Section 43.21 was originally part of Form P, which the Commission eliminated in 1984.

Nor is information from the largest common carriers regarding their annual operating revenues and total communications plant value necessary to protect consumers. The Commission justified the rule in 1984 by indicating that the required information was “necessary to provide a solid basis of publicly-available data on the telecommunications market structure and on AT&T’s major competitors until we decide whether to seek more information.” *Form P Elimination Order*, ¶ 4. That the rule is anachronistic is clear from the reference to “AT&T’s major competitors.” Furthermore, as discussed in detail in Appendix B, the communications marketplace has changed dramatically in the intervening 28 years, and the collection of limited financial data about a limited number of competitors does not provide any useful information regarding the “telecommunications market structure” in today’s marketplace.

The Section 43.21(c) filing requirements also are largely duplicative of other available information. For example, information regarding a telecommunications carrier’s revenues is contained in the more widely applicable Form 499-A, which further undermines any purported justification for the rule. Indeed, as AT&T noted in its comments submitted in the Commission’s 2010 Biennial Review proceeding, “[t]he FCC’s own filing instructions explicitly state that ‘Total toll revenues reported in the [Section 43.21(c)] letter should equal the amounts reported in column A of FCC Form 499-A in the carrier’s carrier toll categories, in end-user toll categories, and an appropriate share of revenues reported in line 403 [billings identified as recovering universal service obligations].’”⁸⁹ In addition, detailed information regarding a publicly traded telecommunications carrier’s total revenues and asset values is available in its SEC filings.

⁸⁹ Comments of AT&T, Inc., WC Docket No. 10-272, at 9 (filed Jan. 31, 2011).

Finally, forbearance from continued compliance with the Section 43.21(c) filing requirements is in the public interest for the same reasons that the Commission has granted forbearance from ARMIS reporting obligations. There is no need for the information being reported, and eliminating unnecessary reporting requirements serves the public interest by lessening the ongoing administrative costs and burdens on carriers and the Commission alike. See *Qwest ARMIS Forbearance Order*, ¶ 16.

I. Rules Governing Notices of Network Changes (47 C.F.R. § 51.329(a)(2), 51.333(a), 51.333(b)).

The Commission should forbear from application to all covered carriers of the provisions of Part 51 that require a redundant carrier-initiated filing and Bureau-initiated public notice of short term network changes when carriers post notice of the network change on their website. Although wholesale customers and the Commission would continue to receive notice of a network change, an ILEC's ability to upgrade or modify its network should not be delayed following that notice, and no additional approvals or opportunity for delay should be permitted following such notice.

Sections 51.325–51.335 set forth the procedures related to the mandatory public notice that ILECs must provide regarding certain changes to their networks. As currently structured, these rules require multiple duplicative public filings and involve unnecessary delay and uncertainty. Section 51.329 details the methods for providing this public notice, which can be done through a filing with the Commission or through industry fora, industry publications, or the carrier's publicly accessible Internet site. 47 C.F.R. § 51.329(a). Section 51.339(a)(2) requires that an ILEC file a separate certification with the Commission regarding network changes when the ILEC provides public notice of such changes by means of industry fora, industry publication, or its website. 47 C.F.R. § 51.329(a)(2). If a carrier wishes to provide less than six months'

notice of a network change, it must include additional information in its certification filed with the Commission, and it also must serve its public notice on each telephone exchange service provider that directly interconnects with the ILEC's network. 47 C.F.R. § 51.333(a). In some circumstances, the rules permit objections to these short term notices that can result in additional delay before implementation of the network change. 47 C.F.R. § 51.333(c) – (f). Finally, the actual date that the network change is permitted to occur will be determined based upon a public notice released by the Commission, announcing the network change. 47 C.F.R. § 51.333(b), assuming no additional delay in response to objections.

When a carrier chooses to provide initial public notice of the network change through its publicly accessible Internet site, the Commission's current process is unnecessarily redundant. It also adds uncertainty into the network change process by delaying the effective date of the notice of network change until the Commission releases its public notice and possible additional delay in response to objections to that notice. While a carrier can control the timing of its initial online public notice and its follow-up submission to the Commission, the carrier is unable to predict how long it will take the Bureau to release the Section 51.333(b) public notice or whether objections will be lodged in an effort to cause additional delay. Carriers have reported that typically seven weeks will pass between the time when public notice is initially posted online and provided individually to affected providers and the Bureau's release of the public notice.

The Commission should forbear from those portions of Sections 51.329 and 51.333 that require the carrier to wait for the Bureau to release an official public notice, or that allow additional delay in response to objections, when the carrier posts its public notice on its publicly-accessible Internet site and individually serves every relevant service provider. Specifically, USTelecom seeks forbearance from 51.329(a)(2), 51.329(c)(2), and 51.333(a)–(f),

to the extent that these provisions require the issuance of a public notice by the Bureau before network changes can be implemented, even though the carrier has made a filing with the Commission, provided notice on its website, and individually served the appropriate interconnecting service providers.⁹⁰

The Bureau public notice is not necessary to ensure that carrier charges, practices, or classifications are just and reasonable because they do not improve the quality or scope of the notice given. Service providers are familiar with the publicly-accessible Internet sites of the ILECs with which they interconnect, as this is the primary means through which information from the ILEC is communicated. Moreover, each of these providers is individually served with the public notice before certification of the carrier's public notice is made with the Commission. Thus, interconnecting service providers have notice of the network change before the filing is made with the Commission and long before the Bureau's release of its public notice. Requiring that an ILEC wait to make a network change until the Bureau releases a public notice, or inserting the opportunity for objections that could delay network changes, only delays the ability of ILECs to make changes to their network, which may hamper their ability to respond to consumer demands and competitive circumstances.

Additionally, these redundant notice requirements are not necessary to protect consumers. As just described, interconnecting service providers will learn the relevant information directly from the ILEC and not through a public notice released by the Bureau. To the extent that consumers need to be aware of network changes, they also are much more likely to obtain this information on their service provider's website, rather than from the Bureau.

⁹⁰ USTelecom does not seek forbearance from these provisions as they apply to situations when carriers provide the public notice of a network change through other methods.

Finally, forbearance from further application of these requirements is in the public interest because it will allow providers to upgrade and modify their IP networks more quickly, in stark contrast to the current regime. The public interest also would be served by eliminating superfluous costs and inefficiencies that ILECs currently must incur and by providing certainty to ILECs regarding the effective date of their network changes. When carriers making a filing with the Commission, provide online public notice, and/or serve interconnecting providers with notice of a short term network change, there is no countervailing public interest that would justify delaying implementation of the change.

J. Service Discontinuance Approval requirements (47 U.S.C. § 214, 47 C.F.R. §§ 63.60, 63.61, 63.62, 63.63, 63.71(a)(5), 63.71(c), 63.90(a)(8)).

Consistent with its other “initiatives to promote broadband” and its desire to “accelerate the transition from circuit-switched to IP networks,”⁹¹ the Commission should forbear from section 214 and its associated rules to the extent they require a broadband provider to obtain Commission approval prior to discontinuing legacy offerings. Specifically, US Telecom seeks forbearance of the Commission’s service discontinuance approval requirements in an area where a carrier makes available IP broadband services (at least 4 Mbps download, 1 Mbps upload) and, as a result of the availability of such new services, seeks to discontinue a preexisting service offering that relies on other technology. Providers would continue to give notice of any service discontinuance to customers and the Commission, and nothing in USTelecom’s Petition is intended to disturb this notice requirement.

⁹¹ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, And Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, As Amended by the Broadband Data Improvement Act*, Seventh Broadband Progress Report and Order on Reconsideration, 26 FCC Rcd. 8008, 8014, ¶ 11 (2011); *Universal Service Reform Order* ¶ 11.

The discontinuance requirements of section 214 and related rules were intended to prevent a community from losing telephone service “without adequate public interest safeguards.”⁹² However, in the circumstances under which USTelecom is seeking forbearance, customers are not losing service. Instead, customers will be getting service delivered via a new, more technologically advanced platform, specifically an IP network. *Universal Service Reform Order*, ¶ 11 (noting that voice will ultimately be just “one of many applications running over fixed and mobile broadband networks”). Under the circumstances, even assuming that section 214 and the Commission’s related rules require a broadband provider to obtain approval prior to discontinuing legacy offerings where it is offering new broadband or IP services, the Commission should forbear from such requirements.

The requested forbearance satisfies the three-prong test in section 10. First, any requirement that a carrier obtain Commission approval prior to discontinuing service under the limited circumstances outlined above are unnecessary to ensure just, reasonable, and nondiscriminatory rates and practices. Indeed, allowing a broadband provider to replace more quickly legacy offerings with broadband services would promote competition, which will ensure just, reasonable, and nondiscriminatory rates and practices.⁹³

Second, the Commission’s service discontinuance approval requirements in today’s broadband world are unnecessary to protect consumers. In fact, mandating that a broadband provider obtain Commission approval prior to discontinuing legacy services that are being

⁹² *Western Union Telegraph Co. Petition for Order to Require the Bell Sys. to Continue to Provide Group/Supergroup Facilities*, Memorandum Opinion and Order, 74 F.C.C. 2d 293, 295 (1979).

⁹³ *See, e.g., U S WEST Declaratory Ruling*, 14 FCC Rcd. 16252, ¶ 31 (finding that “competition is the most effective means of ensuring that the charges, practices, classifications, and regulations with respect to [a telecommunications service] are just and reasonable, and not unjustly or unreasonably discriminatory”).

replaced with broadband services disserves both broadband providers and consumers alike. Broadband providers are disadvantaged by having to wait weeks if not months before being able to introduce new services in place of their legacy offerings. Likewise, consumers are harmed by being unable to take advantage of new service offerings sooner rather than later.⁹⁴

The Commission recognized the consumer harms resulting from its section 214 service discontinuance requirements when it granted forbearance from these requirements to CMRS providers. According to the Commission, “the time involved in the decertification process can impose additional losses on a carrier after competitive circumstances have made a particular service uneconomic, and if adequate substitute services are abundantly available, the discontinuance application is unnecessary to protect consumers.”⁹⁵ The same logic applies here. Because USTelecom’s forbearance request is premised upon broadband services being available to replace the legacy offerings being discontinued, the requirement that a broadband provider

⁹⁴ Under the Commission’s rules, an application to discontinue service is automatically granted 31 or 60 days after filing by a nondominant carrier or dominant carrier, respectively, “unless the Commission has notified the applicant that the grant will not be automatically effective.” 47 C.F.R. § 63.71(c). However, the rules provide that a discontinuance application is not deemed filed until “the date the Commission releases public notice of the filing.” *Id.* Historically, it can take three or four weeks for this public notice to be released. *See, e.g., Comments Invited On Application of Open Range Communications, Inc. To Discontinue Interconnected VoIP Services*, WC Docket No. 11-183, DA 11-1847 (rel. Nov. 2, 2011) (inviting comment on application to discontinue services filed on October 6, 2011); *Comments Invited On Application of Verizon Delaware LLC, Verizon Maryland Inc., Verizon New England Inc., Verizon New Jersey Inc., Verizon New York Inc., Verizon Pennsylvania Inc., Verizon Virginia Inc., and Verizon Washington, D.C. Inc. to Discontinue Domestic Telecommunications Services*, WC Docket No. 11-180, DA 11-1829 (rel. Oct. 31, 2011) (inviting comment on application to discontinue services filed on September 29, 2011).

⁹⁵ *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd. 1411, 1481 (¶ 182) (1994); *see also* 47 C.F.R. § 20.15(b)(3) (CMRS providers are not required to “[s]ubmit applications for new facilities or discontinuance of existing facilities”) (“*Mobile Services Order*”).

maintain that legacy offering when it no longer makes economic sense to do so is unnecessary to protect consumers.

Forbearance of the service discontinuance approval requirements under the circumstances specified above is in the public interest. Forbearance would avoid the costs to providers and consumers previously described, which, when forbearing from applying service discontinuance requirements to CMRS providers, the Commission held would serve the public interest. *Mobile Services Order*, 9 FCC Rcd. at 1481. Likewise, granting forbearance would advance the Commission's goal "of encouraging migration to modern, all IP networks," which is plainly in the public interest.⁹⁶ Finally, consumers will be adequately protected by the continued requirement that providers notify consumers and the Commission of their intent to discontinue service – a requirement unaffected by US Telecom's forbearance request.⁹⁷

⁹⁶ *Universal Service Reform Order* ¶ 764; see also *id.* ¶ 783 (noting "our goal is to facilitate the transition to an all IP-network ..."); *id.* ¶ 968 ("One of the goals of our reform is to promote investment in and deployment of IP networks"); *Administration of the North American Numbering Plan*, Order, 20 FCC Rcd. 2957, 2959, ¶ 4 (2005) (recognizing the public interest benefits associated with "[e]xpediting the implementation of IP-enabled services that interconnect to the PSTN" and encouraging "the rapid deployment of new technologies and advanced services that benefit American consumers").

⁹⁷ Because US Telecom is only requesting forbearance from the service discontinuance approval requirement under limited circumstances, the scope of relief sought is considerably more narrow than prior petitions seeking forbearance from section 214 requirements that the Commission denied. See, e.g., *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, 25 FCC Rcd. 8622 (2010) (denying forbearance from section 214 and Part 63 of the Commission's rules concerning the processes for acquiring lines, discontinuing service, and assignments or transfers of control); *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, Memorandum Opinion and Order, 22 FCC Rcd. 21293 (2007) (same).

K. Traffic Damage Claim rules (47 C.F.R. § 64.1).

The Commission should forbear from application to all carriers of the Traffic Damage Claim rule contained in Section 64.1. Section 64.1, which applies to carriers engaged in furnishing “radio-telegraph, wire-telegraph, or ocean-cable service,” requires such carriers to maintain “separate files for each damage claim of a traffic nature.” 47 C.F.R. § 64.1. The rule also prohibits carriers from making payments as a result of any traffic damage claim in excess of the total amount collected for message(s) from which the claim arose unless the claim sets forth its rationale in writing. Commission staff has recommended the removal of this rule for more than a decade, finding it to be outdated and duplicative of the requirements of other federal agencies, specifically the SEC and the IRS.⁹⁸

USTelecom agrees with the Wireline Competition Bureau and urges that the Commission forbear from applying Rule 64.1, since it is unnecessary to ensure that a carrier’s rates are just, reasonable, and nondiscriminatory. Furthermore, because the rule is outdated and duplicative, it is not necessary to protect consumers. Indeed, under the circumstances, continued enforcement of this rule does little more than waste the resources of the both the Commission and affected carriers. As such, forbearance from continued application of Rule 64.1 would be in the public interest.

⁹⁸ See, e.g., *Federal Communications Commission Biennial Regulatory Review 2000 Staff Report* at 98 (Sept. 19, 2000) attached to Biennial Review 2000 Staff Report Released, CC Docket No. 00-175, *Public Notice*, 15 FCC Rcd. 21084 (2000); *2004 Wireline Competition Bureau Biennial Regulatory Review*, Staff Report, WC Docket No. 04-179, 20 FCC Rcd. 263, 311 (2005); *2006 Wireline Competition Bureau Biennial Regulatory Review*, Staff Report, WC Docket No. 06-157, 22 FCC Rcd. 2803, 2853-54 (2007).

L. Structural Separation Requirements for Independent ILECs (47 C.F.R. § 64.1903).

The Commission should forbear from applying to all independent ILECs the structural separation requirements of Section 64.1903 and from applying dominant carrier regulation for long distance services offered by an independent ILEC on an integrated basis. Section 64.1903 mandates that, when providing in-region, interstate, interexchange, and international telecommunications services other than through resale, an independent ILEC must do so only through a separate affiliate that is required to: (1) maintain separate books of account; (2) purchase services from the independent ILEC pursuant to tariffs or generally available contract rates; and (3) not jointly own transmission or switching facilities.

Section 64.1903 stemmed from a concern that an ILEC's control of bottleneck local access facilities could give it the incentive and ability to distort interexchange competition by (1) misallocating long distance costs to monopoly local exchange services, (2) discriminating against long distance competitors in the provisioning of exchange and exchange access services, or (3) initiating a price squeeze to increase its long distance share.⁹⁹ Although the Commission did not find that this behavior was actually occurring, it determined that the Section 64.1903 requirements "would aid in the detection and prevention of such anticompetitive conduct" and that any burdens imposed on ILECs as a result of the rules would not be unreasonable in light of the resulting protections. *LEC Classification Order*, ¶¶ 163 & 167.

⁹⁹ See *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket Nos. 96-149, 96-61, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd. 15756, 15848-49 ¶¶ 159-161 (1997) ("*LEC Classification Order*").

A decade ago, the Commission initiated a proceeding to reexamine Rule 64.1903.¹⁰⁰ That proceeding remains pending. In the interim, however, the Commission allowed the BOCs and their independent ILEC affiliates to provide in-region, interstate, and international, long distance services on an integrated basis without being subject to dominant carrier regulation as long as they complied with certain targeted safeguards as well as with other continuing statutory and regulatory obligations.¹⁰¹ More recently, the Commission conditionally granted the request of Puerto Rico Telephone Company (“PRT”) for a waiver of Rule 64.1903, pending a determination whether PRT is dominant in the provision of in-region interexchange and international telecommunications services.¹⁰²

In light of the dramatic changes in the competitive landscape in the intervening 15 years since Rule 64.1903 was adopted, there is no longer any justification for the rule, and the Commission should forbear from its continued application. As described in the *LEC Classification Order*, the structural separation rule is rooted in concerns about ILECs exploiting their alleged control over bottleneck local access facilities to gain an unfair advantage in the long

¹⁰⁰ See 2000 Biennial Regulatory Review of Separate Affiliate Requirement of Section 64.1903 of the Commission’s Rules, Notice of Proposed Rulemaking, 16 FCC Rcd. 22745 (2001).

¹⁰¹ Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission’s Rules; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services, WC Docket Nos. 02-112, 06-120, CC Docket No. 00-175, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd. 16440 (2007) (“Section 272 Sunset Order”).

¹⁰² Petition of Puerto Rico Telephone Company, Inc. and Puerto Rico Telephone Larga Distancia, Inc. for Waiver of Section 64.1903 of the Commission’s Rules, Memorandum Opinion and Order, 25 FCC Rcd. 17704 (2010) (“PRT Waiver Order”); see also 2010 Biennial Review Public Notice at 3 (question the continued necessity of the structural separation requirements of Section 64.1903 “as a result of competition between providers of telecommunications services ...”).

distance market. However, as the Commission has recognized and as further demonstrated in Appendix B, there are no dominant IXC's, and ILEC's currently face robust competition for all-distance services.¹⁰³ With the widespread availability of cable telephony, wireless, and various VoIP services, there are simply too many competitive options that do not rely upon traditional access methods for an ILEC to be able to control any "bottleneck" facility in order to increase the price of long distance service. Given this fierce competitive environment, and the regulatory requirements that will continue to apply to ILEC's, Rule 64.1903 is simply not necessary to ensure that an ILEC's rates are just, reasonable, and nondiscriminatory.

Section 64.1903 is also not necessary to protect consumers. For the same reasons that robust competition will prevent ILEC's from engaging in unjust or unreasonable practices, it also will protect consumers from any potential misconduct by an ILEC offering local and long distance services on an integrated basis. Consumers would be protected without the onerous and burdensome requirements in Rule 64.1903.

Finally, forbearance from Rule 64.1903 and the application of dominant carrier regulation of long distance services offered on an integrated basis would serve the public interest by eliminating unnecessary costs on independent ILEC's. The Commission has recognized that the Rule 64.1903 structural separation requirements "impose significant administrative costs on [carriers] and reduce efficiency by eliminating opportunities to take advantage of the economies of scope and scale associated with integrated operation." *PRT Separate Affiliate Waiver Order*, ¶ 14. The Commission also noted that "[c]ompliance with section 64.1903 also may delay or

¹⁰³ See *Equal Access NOI* ¶ 11; *Universal Service Reform Order* ¶ 9 (noting the competition "among telephone companies, cable companies, and wireless providers for bundles of local and local distance phone service and other services" and the shift by consumers "from traditional telephone service to substitutes including Voice over Internet Protocol (VoIP), wireless, texting, and email").

prevent [carrier] efforts to respond to technological and marketplace developments, deploy innovative transmission and switching equipment, and bring new services to market.” *Id.* Because the elimination of these requirements would promote competition and innovation in telecommunications markets, forbearance from application of Rule 64.1903 is in the public interest.

M. Rules Governing Extension of Unsecured Credit for Interstate and Foreign Communications Services to Candidates for Federal Office (47 C.F.R. § 64.801, 64.804).

The Commission should forbear from application to all covered carriers of the Part 64 Subpart H rules governing the extension of credit for communications services to candidates for Federal office. *See, e.g.*, 47 C.F.R. § 64.804. Subpart H of Part 64 requires certain carriers to file periodic reports with the Commission detailing the terms of any unsecured credit extended by the carrier to, or on behalf of, a candidate for federal office. 47 C.F.R. § 64.804(g). In addition, subpart H requires carriers to extend unsecured credit on substantially equal terms to all candidates and other persons on behalf of any candidate for the same office. 47 C.F.R. § 64.804(b). These provisions are unnecessary in light of current state and federal laws. In particular, in the nearly forty years since this provision was adopted, numerous laws have been enacted governing campaign finance, gifts to government officials or candidates, and credit arrangements, at both the state and federal level, which obviate the need for Part 64 Subpart H.¹⁰⁴

The rules governing extension of unsecured credit to candidates for federal office should be eliminated because they are not necessary to ensure that carrier charges, practices, and classifications are just and reasonable. These rules also are unnecessary to protect consumers.

¹⁰⁴ *See, e.g.*, 2 U.S.C. § 431, et seq. (as revised by Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81 (2002)); Haw. Rev. Stat. §§ 84-11, 84-13; Iowa Code § 68B.22.

Federal candidates have myriad sources from which to obtain telecommunications service. To the extent that there is any real risk to consumers posed by the relationship between federal candidates and service providers, the Commission's regulation of only one subset of competitors would do nothing to mitigate that risk. Indeed, by imposing these regulatory burdens on only a limited number of competitors, the Commission's rule distorts the competitive process, which is not in the public interest.

N. "Cash Working Capital Allowance" requirement (47 C.F.R. § 65.820(d)).

The Commission should forbear from future application of the "Cash Working Capital Allowance" requirement to all price cap carriers. Section 65.820(d) requires carriers subject to Part 65 to calculate the "cash working capital allowance" either by performing a lead-lag study or by using an FCC-prescribed formula. Although subpart G of Part 65 relates to rate base issues, price cap carriers may be obligated to comply with the cash working capital allowance requirement. Carriers subject to price cap regulation should not be required to calculate "cash working capital allowance" as defined in Rule 65.820(d). This calculation is detailed, time consuming, and resource-intensive, yet it is in no way useful for ratemaking purposes. Furthermore, the cash working capital calculation changes with every change to interstate operating expenses, depreciation, or amortization. In the event any of these components changes after annual reports are filed, all reports displaying cash working capital must be refiled, notwithstanding the fact that cash working capital is not itself a meaningful calculation.

The cash working capital allowance serves no substantive regulatory purpose for price cap carriers, and any minimal transparency that is provided by requiring that price cap carriers complete this calculation is outweighed by the burden and inconvenience of this requirement. The calculation of cash working capital allowance in no way ensures just and reasonable rates by price cap carriers, nor is it necessary for or even relevant to protecting consumers. Additionally,

the unnecessary busywork required for price cap carriers to comply with this rule provides no consumer benefit and is merely one more lop-sided obligation placed on a subset of competitors. As such, the cash working capital allowance requirement is not in the public interest, and forbearance is required.

O. Rules Governing Furnishing of Facilities to Foreign Governments for International Communications (47 C.F.R. § 64.301).

The Commission should forbear from application to all carriers of Section 64.301. Section 64.301 requires common carriers to furnish communications services to a foreign government “upon reasonable demand” and to deny communications services to a foreign government, upon order of the Commission, when such government “fails or refuses” to provide communications services to the U.S. government. This rule is intended to ensure that the U.S. Government has access to communications services overseas, and, according to the Commission staff, the rule was last revised in 1963.¹⁰⁵

Forbearance from this rule is appropriate because the ability to ensure that the U.S. Government has adequate access to communications services overseas is best addressed through contracts, consistent with applicable treaties and other federal laws. Because this provision is presumably intended to promote international diplomacy, it is unnecessary to ensure that a carrier’s rates are just, reasonable, and nondiscriminatory.

Additionally, this rule is not necessary to protect consumers because, to the extent consumer protection hinges upon the ability of U.S. government officials to access communications abroad, this goal can reliably be achieved without Commission intervention given changes in technology since the rule was originally enacted. In particular, the U.S.

¹⁰⁵ *Biennial Review 2000 Staff Report*, 2000 FCC LEXIS 5034 (rel. Sept. 19, 2000).

government has access to global satellite networks and other dedicated communications links that are outside the control of foreign governments, which obviates any need for Rule 64.301.

Finally, by only applying to wire and radio common carriers, the rule ignores other means of communications – such as satellite – through which governments are able to access communications services. This section merely creates an additional regulatory burden on a limited subset of carriers, without actually providing any concomitant consumer benefits. Accordingly, forbearance from this rule is in the public interest.

P. Rules Governing Recording of Telephone Conversations with Telephone Companies (47 C.F.R. § 64.501).

The Commission should forbear from application to all covered carriers of Section 64.501, which sets forth requirements to which common carriers must adhere in recording telephone conversations between the telephone company members of the public. The Commission's goal in adopting this rule "was to assure that the public user of the telephone service would have notice whenever any telephone conversation that he is conducting with a telephone company is being recorded by the latter."¹⁰⁶ Forbearance is appropriate because the rule has been rendered moot by the development of a robust body of privacy laws at the federal and state level. Under the circumstances, no reason exists to treat telephone companies differently from other businesses when it comes to rules regarding the recording of conversations with their customers.

Rule 64.501 was adopted more than 40 years ago, and since that time consumers have become familiar with the standard disclosure that a call may be recorded for quality control or

¹⁰⁶ *Use of Recording Devices by Telephone Companies*, Report and Order, Docket No. 17152, FCC 67-892, 32 Fed. Reg. 11275 (1967).

training purposes. This disclosure is commonplace among businesses that interact with the public, which obviates the need for a rule specific to telephone companies.

Moreover, there are myriad state and federal protections for information and communication privacy that are more than sufficient to ensure that telephone companies act responsibly when recording telephone conversations with their customers. For example, since the adoption of Section 64.501, Congress enacted the Federal Wiretap Act, which was Title III of the Omnibus Crime Control and Safe Streets Act of 1968. Federal wiretap laws have since been strengthened and complemented by state laws governing the recording of telephone conversations.¹⁰⁷ These laws, which are enforceable in state and federal courts, apply uniformly to all entities engaged in recording activities and are better suited to protect the privacy of consumers than the Commission's regulations, which only apply to a limited subset of competitors.

Forbearance from Section 54.501 is appropriate because the rule does nothing to ensure just, reasonable, and nondiscriminatory rates. Furthermore, in light of various state and federal laws that govern the recording of telephone conversations, the rule is unnecessary to protect consumers. Finally, continued enforcement of this rule does not serve the public interest because it represents an unnecessary obligation imposed on only a subset of competitors in the communications marketplace and has the potential to create inconsistent obligations on those carriers subject to this rule as well as state and federal privacy laws.

¹⁰⁷ See, e.g., 18 U.S.C. §§ 2510-2522; D.C. Code Ann. §§ 23-542, 23-544; Fla. Stat. § 934.03(1); Ill. Comp Stat. 5/14-1(a)(1); Va. Code Ann. § 19.2-62.

Q. Prepaid Calling Card Reporting requirements (47 C.F.R. § 64.5001).

The Commission should forbear from application to all covered carriers of the prepaid calling card reporting requirements of Section 64.5001, which requires prepaid calling card providers to submit certified quarterly reports that contain certain percentage of use and revenue information.¹⁰⁸ This requirement was adopted in 2006 in response to uncertainty regarding the classification of certain prepaid calling card services and related obligations.¹⁰⁹ The Commission indicated at the outset that this rule was largely a prophylactic measure adopted “to reduce further the incentive for carriers to report false or misleading information” amongst themselves.¹¹⁰

Rule 64.5001 is unnecessary. Carriers have established business practices for exchanging required data, and there is no need for certified reports, which have never served any substantive purpose at the Commission. Moreover, the prepaid calling card market, which remains fiercely competitive, has been marginalized by the many competitive alternatives available to consumers, including wireless and VoIP.

Under the circumstances described above, the calling card reporting requirements under this rule are unnecessary to ensure just, reasonable, and nondiscriminatory rates and practices. Moreover, these reports do not protect consumers, particularly when they are not used by the Commission in any substantive manner and when the calling card market is functioning properly. Finally, forbearance from enforcement of this rule is in the public interest by eliminating an

¹⁰⁸ 47 C.F.R. § 64.5001.

¹⁰⁹ *Regulation of Prepaid Calling Card Services*, Declaratory Ruling and Report and Order, 21 FCC Rcd. 7290, ¶¶ 38-40 (2006).

¹¹⁰ *Id.*, ¶ 38.

unnecessary reporting requirement, which would reduce costs and burdens imposed on calling card providers.

IV. CONCLUSION

For the foregoing reasons, the Commission should grant USTelecom's Petition and forbear from application of the legacy telecommunications regulations.

Respectfully submitted,

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APPENDIX A

Scope of Relief Sought (47 C.F.R. § 1.54(e)(3)(i))

47 C.F.R. § 1.54(a)(1)

USTelecom seeks forbearance (to the extent forbearance has not previously been granted) from the specific rules, regulations, and statutory provisions set forth in the table below.

Rules, Regulations, and Statutory Provisions

Equal Access Scripting Requirement

Rule, regulation, or statutory provision	As applied to all covered carriers	As applied to all price cap carriers
<i>Investigation of Access and Divestiture Related Tariffs, Allocation Plan Waivers and Tariffs</i> , CC Docket No. 83-1145 Phase I, Memorandum Opinion and Order, 101 FCC 2d 935, 949-50, ¶ 40 (CCB 1985), <i>recon. denied</i> , 102 FCC 2d 503 (1985); <i>Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act</i> , CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 22046, ¶ 292 (1997); <i>Application of BellSouth Corp., et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina</i> , CC Docket No. 97-208, Memorandum Opinion and Order, 13 FCC Rcd 539, 667-72, ¶¶ 231-39 (1997) (stating that BOCs are permitted to market their own long distance services as long as their marketing scripts fulfill the equal access requirements), <i>aff'd</i> , <i>BellSouth Corp. v. FCC</i> , 162 F.3d 678 (D.C. Cir. 1998). <i>See also</i> 47 U.S.C. § 251(g) (preserving the equal access obligations that applied prior to February 8, 1996).	X	

Open Network Architecture and Comparably Efficient Interconnection (“ONA/CEI”) requirements

Rule, regulation, or statutory provision	As applied to all covered carriers	As applied to all price cap carriers
<p>Open Network Architecture and Comparably Efficient Interconnection Requirements, Structural Separation, and All-Carrier Rule.</p> <p><i>Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), Final Decision, 77 F.C.C.2d 384 (1980), reconsidered, Memorandum Opinion and Order, 84 F.C.C.2d 50 (1980), further reconsidered, Memorandum Opinion and Order on Further Reconsideration, 88 F.C.C.2d 512 (1981), aff'd, Computer and Communications Indus. Ass'n. v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983) (“Computer I”); Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), Report and Order, 104 F.C.C.2d 958 (1986) (“Computer III”); Filing and Review of Opening Network Architecture Plans, Memorandum Opinion and Order on Reconsideration, 5 FCC Rcd 3084 (1990).</i></p>	X	

Enhanced Services and CPE Structural Separation Rule

Rule, regulation, or statutory provision	As applied to all covered carriers	As applied to all price cap carriers
47 C.F.R. § 64.702	X	

Cost Assignment Rules¹

Rule, regulation, or statutory provision	As applied to all covered carriers	As applied to all price cap carriers
47 C.F.R. § 1.795		X
47 C.F.R. § 32.23		X
47 C.F.R. § 32.27		X
47 C.F.R. § 32.5280		X
47 C.F.R. § 36.1		X
47 C.F.R. § 36.2		X
47 C.F.R. § 36.3		X
47 C.F.R. § 36.101		X
47 C.F.R. § 36.102		X
47 C.F.R. § 36.111		X
47 C.F.R. § 36.112		X
47 C.F.R. § 36.121		X
47 C.F.R. § 36.122		X
47 C.F.R. § 36.123		X
47 C.F.R. § 36.124		X
47 C.F.R. § 36.125		X
47 C.F.R. § 36.126		X
47 C.F.R. § 36.141		X
47 C.F.R. § 36.142		X
47 C.F.R. § 36.151		X
47 C.F.R. § 36.152		X
47 C.F.R. § 36.153		X

Cost Assignment Rules¹ cont'd.

Rule, regulation, or statutory provision	As applied to all covered carriers	As applied to all price cap carriers
47 C.F.R. § 36.154		X
47 C.F.R. § 36.155		X
47 C.F.R. § 36.156		X
47 C.F.R. § 36.157		X
47 C.F.R. § 36.161		X
47 C.F.R. § 36.162		X
47 C.F.R. § 36.171		X
47 C.F.R. § 36.172		X
47 C.F.R. § 36.181		X
47 C.F.R. § 36.182		X
47 C.F.R. § 36.191		X
47 C.F.R. § 36.202		X
47 C.F.R. § 36.211		X
47 C.F.R. § 36.212		X
47 C.F.R. § 36.213		X
47 C.F.R. § 36.214		X
47 C.F.R. § 36.215		X
47 C.F.R. § 36.216		X
47 C.F.R. § 36.221		X
47 C.F.R. § 36.222		X
47 C.F.R. § 36.223		X
47 C.F.R. § 36.224		X

Cost Assignment Rules¹ cont'd.

Rule, regulation, or statutory provision	As applied to all covered carriers	As applied to all price cap carriers
47 C.F.R. § 36.225		X
47 C.F.R. § 36.301		X
47 C.F.R. § 36.302		X
47 C.F.R. § 36.310		X
47 C.F.R. § 36.311		X
47 C.F.R. § 36.321		X
47 C.F.R. § 36.331		X
47 C.F.R. § 36.341		X
47 C.F.R. § 36.351		X
47 C.F.R. § 36.352		X
47 C.F.R. § 36.353		X
47 C.F.R. § 36.354		X
47 C.F.R. § 36.361		X
47 C.F.R. § 36.371		X
47 C.F.R. § 36.372		X
47 C.F.R. § 36.373		X
47 C.F.R. § 36.374		X
47 C.F.R. § 36.375		X
47 C.F.R. § 36.376		X
47 C.F.R. § 36.377		X
47 C.F.R. § 36.378		X
47 C.F.R. § 36.379		X

Cost Assignment Rules¹ cont'd.

Rule, regulation, or statutory provision	As applied to all covered carriers	As applied to all price cap carriers
47 C.F.R. § 36.380		X
47 C.F.R. § 36.381		X
47 C.F.R. § 36.382		X
47 C.F.R. § 36.391		X
47 C.F.R. § 36.392		X
47 C.F.R. § 36.411		X
47 C.F.R. § 36.412		X
47 C.F.R. § 36.421		X
47 C.F.R. § 36.501		X
47 C.F.R. § 36.502		X
47 C.F.R. § 36.503		X
47 C.F.R. § 36.504		X
47 C.F.R. § 36.505		X
47 C.F.R. § 36.506		X
47 C.F.R. § 36.507		X
Appendix to Title 47 Part 36 of the C.F.R.		X
47 C.F.R. § 43.21		X
47 C.F.R. § 64.901		X
47 C.F.R. § 64.902		X
47 C.F.R. § 64.903		X
47 C.F.R. § 64.904		X
47 C.F.R. § 64.905		X

Cost Assignment Rules¹ cont'd.

Rule, regulation, or statutory provision	As applied to all covered carriers	As applied to all price cap carriers
47 C.F.R. § 65.600		X
47 C.F.R. § 69.301		X
47 C.F.R. § 69.302		X
47 C.F.R. § 69.303		X
47 C.F.R. § 69.304		X
47 C.F.R. § 69.305		X
47 C.F.R. § 69.306		X
47 C.F.R. § 69.307		X
47 C.F.R. § 69.309		X
47 C.F.R. § 69.310		X
47 C.F.R. § 69.401		X
47 C.F.R. § 69.402		X
47 C.F.R. § 69.403		X
47 C.F.R. § 69.404		X
47 C.F.R. § 69.405		X
47 C.F.R. § 69.406		X
47 C.F.R. § 69.407		X
47 C.F.R. § 69.408		X
47 C.F.R. § 69.409		X
47 C.F.R. § 69.411		X
47 C.F.R. § 69.412		X
47 C.F.R. § 69.413		X

Cost Assignment Rules¹ cont'd.

Rule, regulation, or statutory provision	As applied to all covered carriers	As applied to all price cap carriers
47 C.F.R. § 69.414		X
47 U.S.C. § 220(a)(2)		X

Forbearance is requested to the same extent as provided in *Petition of AT&T Inc. for Forbearance under 47 U.S.C. §160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, Memorandum Opinion and Order, 23 FCC Rcd 7302 (2008), and *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd 13647 (2008).

Part 32, Uniform System of Accounts for Telecommunications Companies and Related Requirements

Rule, regulation, or statutory provision	As applied to all covered carriers	As applied to all price cap carriers
47 U.S.C. § 220(a)(2)		X
Subpart A – Preface 47 C.F.R. §§ 32.1 – 32-4		X
Subpart B, 47 C.F.R. §§ 32.11 – 32.27		X
Subpart C, 47 C.F.R. §§ 32.101- 32.4550		X
Subpart D, 47 C.F.R. §§ 32.4999 – 32.5300		X
Subpart E, 47 C.F.R. §§ 32.5999 – 32.6790		X
Subpart F, 47 C.F.R. § 32.6999 – 32.7990		X
Subpart G, 47 C.F.R. § 32.9000		X

Part 32, Uniform System of Accounts for Telecommunications Companies and Related Requirements (cont'd)

<p>Prior Approval Requirement of Changes in Statistical Sampling Process.</p> <p><i>See, e.g., Letter from Albert M. Lewis, Chief, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission to Linda Vandeloop, Director, AT&T, 25 FCC Rcd 13731 (2010) (requiring “prior Commission notification and approval of any changes to the statistical sampling processes”); Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission to Timothy M. Boucher, Corporate Counsel, Qwest, 25 FCC Rcd 2114 (2010) (citing US West Communications, Inc., Cost Allocation Manual Revision to Utilize a Statistical Sampling System for Certain Technician Groups Time Reporting, Memorandum Opinion and Order, 100 FCC Rcd 9382, ¶ 1 (1995)); Petition of Qwest Corp. for Forbearance from Enforcement of the Commission’s ARMIS and 492A Reporting Requirements Pursuant to 47 USC §160(c), Memorandum Opinion and Order, 23 FCC Rcd 18483 (2008) (indicating that Qwest, AT&T, and Verizon remain subject to Part 32 USOA requirements).</i></p>		X
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Basic and Continuing Property Record Requirements

Rule, regulation, or statutory provision	As applied to all covered carriers	As applied to all price cap carriers
47 C.F.R. §§ 32.2000(e), (f)	X	

Part 42 Recordkeeping requirements

Rule, regulation, or statutory provision	As applied to all covered carriers	As applied to all price cap carriers
47 C.F.R. § 42.4	X	
47 C.F.R. § 42.5	X	
47 C.F.R. § 42.7	X	
47 C.F.R. § 42.10(a)	X	

ARMIS Report 43-01

Rule, regulation, or statutory provision	As applied to all covered carriers	As applied to all price cap carriers
<i>Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), Report and Order, 2 FCC Rcd 5770 (1987) (ARMIS Order), modified on recon., 3 FCC Rcd 6375 (1988); 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2, CC Docket No. 00-199, Report and Order, 16 FCC Rcd 19911, ¶¶ 135-138 (2001), modified on recon., 17 FCC Rcd 4766 (2002).</i>	X	

Annual Revenue and Total Communications Plant reporting requirement

Rule, regulation, or statutory provision	As applied to all covered carriers	As applied to all price cap carriers
47 C.F.R. § 43.21(c)	X	

Rules Governing Notices of Network Changes²

Rule, regulation, or statutory provision	As applied to all covered carriers	As applied to all price cap carriers
47 C.F.R. § 51.329(a)(2)	X	
47 C.F.R. § 51.329(c)(2)	X	
47 C.F.R. § 51.333(a) – (f)	X	

² Forbearance from these Notice of Network Change Rules requested only when notice is provided via a carrier's publicly-accessible Internet site.

Service Discontinuance Approval requirements³

Rule, regulation, or statutory provision	As applied to all covered carriers	As applied to all price cap carriers
47 U.S.C. 214	X	
47 C.F.R. § 63.60	X	
47 C.F.R. § 63.61	X	
47 C.F.R. § 63.62	X	
47 C.F.R. § 63.63	X	
47 C.F.R. § 63.71(a)(5)	X	
47 C.F.R. § 63.71(c)	X	
47 C.F.R. § 63.90(a)(8)	X	

³ Forbearance of Commission service discontinuance approval requirements requested only where a carrier makes available IP broadband services and, as a result of such availability, seeks to discontinue a preexisting service offering that relies on other technology.

Traffic Damage Claim rules

Rule, regulation, or statutory provision	As applied to all covered carriers	As applied to all price cap carriers
47 C.F.R. § 64.1	X	

Separate Affiliate Requirements for Independent ILECs

Rule, regulation, or statutory provision	As applied to all covered carriers	As applied to all price cap carriers
47 C.F.R. § 64.1903	X	

Rules Governing Extension of Unsecured Credit for Interstate and Foreign Communications Services to Candidates for Federal Office

Rule, regulation, or statutory provision	As applied to all covered carriers	As applied to all price cap carriers
47 C.F.R. § 64.801	X	
47 C.F.R. § 64.804	X	

“Cash Working Capital Allowance” requirement

Rule, regulation, or statutory provision	As applied to all covered carriers	As applied to all price cap carriers
47 C.F.R. § 65.820(d)		X

Rules Governing Furnishing of Facilities to Foreign Governments for International Communications

Rule, regulation, or statutory provision	As applied to all covered carriers	As applied to all price cap carriers
47 C.F.R. § 64.301	X	

Rules Governing Recording of Telephone Conversations with Telephone Companies

Rule, regulation, or statutory provision	As applied to all covered carriers	As applied to all price cap carriers
47 C.F.R. § 64.501	X	

Prepaid Calling Card Reporting requirements.

Rule, regulation, or statutory provision	As applied to all covered carriers	As applied to all price cap carriers
47 C.F.R. § 64.5001	X	

47 C.F.R. § 1.54(a)(2)

USTelecom requests that this forbearance relief be applied as a class to all covered telecommunications carriers or to all telecommunications carriers operating under price cap regulation at the interstate level, as specified for each provision in the table above.

47 C.F.R. § 1.54(a)(3)

USTelecom requests that forbearance relief be applied to all covered services, including but not limited to interstate and international voice and data services, whether provided to the consumer or business markets.

47 C.F.R. § 1.54(a)(4)

USTelecom requests that forbearance relief apply in all regions across the entire United States and all territories.

47 C.F.R. § 1.54(a)(5)

N/A

47 C.F.R. § 1.54(c)

Pursuant to the requirements of Section 1.54(c) of the Commission's rules, USTelecom notes that it has participated in the following proceedings pending before the Commission, in which it has taken positions regarding regulatory relief from the subject rules and regulations that are identical to, or comparable to, the relief sought in this petition:

- *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 11-121, Eighth Broadband Progress Notice of Inquiry, 26 FCC Rcd 11800 (2011). *See* Comments of the United States Telecom Association, GN Docket No. 11-121 at 22-24 (filed Sept. 6, 2011)
- *Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 11-10, 07-38, 08-190, 10-132, Notice of Proposed Rulemaking, 26 FCC Rcd 1508 (2011). *See* Comments of United States Telecom Association, WC Docket Nos. 11-10, 07-38, 08-190, 10-132 (filed Mar. 30, 2011).

- *Petition of the United States Telecom Association for Waiver from Application of the Equal Access Scripting Requirement*, WC Docket No. 08-225 (filed Nov. 10, 2008)
- *Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, CC Docket No. 02-39. *See* Comments of the United States Telecom Association, CC Docket No. 02-39 (filed May 29, 2007)
- *Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, CC Docket No. 00-175, Notice of Proposed Rulemaking (2001). *See* Comments of the United States Telecom Association, CC Docket No. 00-175 (filed Nov. 1, 2001)

In addition to these pending proceedings, USTelecom has routinely participated in the Commission's biennial reviews of its telecommunications regulations in which it has advocated for the elimination of various regulations that are the subject of its Forbearance Petition.

APPENDIX B

Supporting Data (47 C.F.R. § 1.54(e)(3)(ii))

COMPETITIVE ANALYSIS

Introduction

The Commission's legacy telecommunications regulations are largely predicated on the historical assumption that a telephone line from an incumbent local exchange carrier ("ILEC") was the only means for a consumer to communicate. This assumption is not valid in today's marketplace where consumers have more choices than ever before to meet their communications needs. Today, consumers can choose from telephony services provided by competitive local exchange carriers ("CLECs"), cable operators, and fixed and mobile wireless providers. Moreover, the near ubiquity of broadband—itsself a highly competitive service available from various sources—provides customers with a host of other communications platforms, including Voice over Internet Protocol ("VoIP") services.

As a result of this vibrant competition, the number of telephone lines provided by ILECs have fallen dramatically. According to the Commission, between 2007 and 2010, the total number of ILEC switched access lines declined by approximately 27 percent, falling from 129.7 million lines to 94.7 million lines.¹ And the decrease in residential ILEC switched access lines has been even more precipitous, declining by nearly 31 percent from 81.8 million lines in 2007 to 55.7 million lines in 2010.² This is roughly one-half the number of ILEC access lines from a decade ago.³ These trends are almost certain to continue, and one industry analyst projects "a compound annual growth rate (CAGR) of -16.6% for ILEC access lines through 2020, which brings the total number of access lines [served by ILECs] down to 16.5 million by the end of the decade"⁴

¹ Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Local Telephone Competition: Status of December 31, 2010*, Table 1 (Oct. 2011) ("*Local Competition Report*").

² *Local Competition Report*, Table 2.

³ See, JSI Capitol Advisors, *Phone Lines 2003* (estimating that there were approximately 194 million ILEC access line as of Dec 31, 2000); also, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Local Telephone Competition: Status of December 31, 1999* (estimating ILECs had 181 million access lines).

⁴ JSI Capital Advisors, *Communications Industry Forecast 2011-2020: ILEC and CLEC Access Lines*, The ILEC Advisor: Communications Industry Trends, Strategies and Perspectives (Oct. 20, 2011) (available at <http://www.jsicapitaladvisors.com/the-ilec-advisor/2011/10/20/communications-industry-forecast-2011-2020-ilec-and-clec-acc.html>).

ILECs currently provide telephone service to less than half of U.S. households. More specifically, USTelecom estimates that ILEC switched access lines accounted for approximately 45 percent of U.S. telephone households as of year-end 2010.⁵ As of this same time period, approximately 32 percent of U.S. households with a telephone were wireless only,⁶ approximately 19 percent were served by cable telephony,⁷ and approximately three percent utilized an “over-the-top” interconnected VoIP service.⁸

⁵ See, Patrick Brogan, USTelecom Research Brief, *Competitive Market for Voice Services* (January 6, 2012) (available at <http://www.ustelecom.org/sites/default/files/documents/010512-ResearchBrief-Competition-Research-Brief-Final.pdf>). According to the CDC, two percent of households have no telephone, which leaves approximately 116.0 million households with telephones. Blumberg & Luke, *Wireless Substitution: Early Release Estimates From the National Health Interview Survey, January to June 2011*, Center for Disease Control National Center for Health Statistics (rel. Dec. 21, 2011) (“*CDC 2011 Wireless Substitution Study*”) (available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201112.pdf>). As noted above, the Commission reports that ILECs had 55.7 million switched access lines at the end of 2010. *Local Competition Report*, Table 2. After deducting non-primary lines, which USTelecom estimates to be about 5 million as of December 2010, ILECs provided voice service to approximately 50 million households as of December 2010, which represents 43 percent of U.S. households with a telephone. If ILEC Interconnected VoIP connections are included—2.3 million after assuming some non-primary lines—ILECs provide telephone service to only 45 percent of U.S. telephone households as of December 2010. Even if non-ILEC switched lines sold by other than cable companies are included—2.1 million after assuming some non-primary lines which presumably are resold ILEC lines—ILECs provided telephone connections to only 47 percent of U.S. telephone households.

⁶ *CDC 2011 Wireless Substitution Study* at p. 1. According to the CDC, 31.6 percent of U.S. households have wireless only out of the 98 percent of households with a telephone, which means that 32.2 percent of total U.S. telephone households subscribe only to wireless service. (Note, the CDC data reflect surveys conducted for a six month period and the figures cited could be interpreted to roughly represent a midpoint in the first or second half of the year, respectively, and one could make mid-year and year-end estimates based on trends (see, e.g., Patrick Brogan, USTelecom Research Brief (January 6, 2012)). Here we simply cite the figures as presented by CDC.)

⁷ The Commission’s *Local Competition Report* reflects that there were 24.6 million non-ILEC residential interconnected VoIP connections and 4.3 million non-ILEC switched connections as of December 2010. For non-ILEC services sold using coaxial cable technology in broadband bundles—a good proxy for overall cable telephony service—there were 21.9 million interconnected VoIP and 2.1 million switched connections, for a total of 24.0 million connections. This estimate is consistent with data from the cable industry’s trade association, which reflect that cable operators provided telephony service to 23.9 subscribers as of year-end 2010. *See*

The level of competition from wireless, cable operators, and VoIP providers is strong nationwide. On the wireline side, the Commission's data reflect that approximately 98 percent of households reside in zip codes that have access to three or more competing carriers or non-ILEC VoIP providers, while over 90 percent of households have their choice of eight or more competitive service providers.⁹ On the wireless side, the Commission reports that approximately 97.2 percent of the U.S. population can choose from among three or more competing wireless carriers, while approximately 90 percent of the U.S. population is served by five or more wireless competitors.¹⁰

Based on the most recent available CDC *state-by-state* wireless substitution data and the Commission's competitive data for the same period – the first half of 2010 – USTelecom has analyzed the degree of substitution for ILEC telephone services by state. This analysis revealed that in geographic areas where wireless substitution may be relatively weaker, cable substitution is relatively stronger, and visa versa. As a result, the vast majority of areas enjoy significant facilities-based competition from wireless, cable, or both. According to USTelecom's analysis, as of the first half of 2010, the percentage of households that used an alternative to an ILEC for telephone service varied by state from a low of approximately 30 percent to a high of 60 percent. If VoIP and traditional switched competitive lines are included, an ILEC competitor provided telephony service

(footnote cont'd.)

<http://www.ncta.com/StatsGroup/Availability.aspx>). However, two adjustments to derive the share of telephone households served by cable operators must be made. First we assume approximately 97 percent of subscribers are residential, which translates to approximately 23.2 million cable residential lines at the end of 2010. Second, as with ILECs, some cable telephony connections are non-primary lines, which USTelecom estimates to be 1.4 million. As a result, at the end of 2010, USTelecom estimates that cable operators provided telephony service to approximately 21.8 million telephone households, which represents approximately 19 percent of the 116.0 million telephone households in the U.S.

⁸ The Commission reports total retail residential interconnected VoIP lines in its *Local Competition Report*. The portion of these lines that is not served by cable reflects predominantly “over-the-top” interconnected VoIP provided by a third party that is not the underlying broadband provider. According to the Commission, as of December 2010, there were 24.6 million non-ILEC residential interconnected VoIP lines, of which approximately 20.8 million were cable, i.e., sold in broadband bundles over coaxial cable, leaving 3.8 million non-ILEC non-cable VoIP connections. Accounting for the possibility that some are non-primary lines, USTelecom estimate that approximately 3.1 million had an over-the-top VoIP connection as of December 2010, which represents nearly three percent of U.S. telephone households.

⁹ *Local Competition Report*, Table 19.

¹⁰ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Fifteenth Report, 26 FCC Rcd 9664, 9667 (2011) (“*Fifteenth Report*”).

to 35 percent to 63 percent of households depending on the state. The average level of substitution faced by ILECs in any state is in the mid-to-high 40 percent range.¹¹

This analysis understates the level of competition because it is based on first half 2010 data, and competitive pressures have only increased in the intervening 20 months. Nonetheless, USTelecom's state competitive analysis merely confirms that voice competition is a widespread phenomenon in the United States, and the market assumptions upon which the Commission's legacy telecommunications regulations were built have long since evaporated.

Below, USTelecom sets forth additional data that illustrate the competitive alternatives available to consumers. In light of this fierce competition and the widespread availability to consumers of various alternative options for the provision of telecommunications services, the outdated legacy regulations that are the subject of USTelecom's Forbearance Petition—which unfairly burden only one subset of competitors—should be eliminated.

Competition from Wireless Services

Perhaps the most significant development in communications competition in the last decade has been the rapid development and proliferation of wireless technology. What began as a fad has now become a necessity, with wireless increasingly displacing traditional wireline telephone service.

Wireless carriers are formidable competitors. By mid-year 2011, wireless carriers collectively had spent \$322 billion in capital investments, with over \$27 billion expended in just the preceding 12-month period.¹² As a result of this investment, particularly in new cell sites, the availability of wireless services has continued to expand. For example, the number of cell sites deployed exceeded 253,000 by the end of 2010, as compared to approximately 247,000 in 2009.¹³

Nearly every American has his or her choice of multiple wireless providers, as the Commission's own data confirm. According to the Commission, the percentage of Americans who live in census blocks with five or more facilities-based wireless

¹¹ See Patrick Brogan, USTelecom Research Brief (May 2, 2011) (available at <http://www.ustelecom.org/Learn/ReportsandStudies/Industry-Stats/>).

¹² CTIA—The Wireless Association®, *Mid-Year Data Survey Results Revised* (Nov. 11, 2011) (available at http://files.ctia.org/pdf/CTIA_Survey_MY_2011_Graphics.pdf); see also CTIA's *Wireless Industry Indices, Semi-Annual Data Survey Results: A Comprehensive Report From CTIA Analyzing the U.S. Wireless Industry, Mid-Year 2011 Results*, at 8 (Nov. 21, 2011) (“*CTIA Semi-Annual Report 2011*”).

¹³ CTIA – The Wireless Association®, *CTIA's Wireless Industry Indices, Semi-Annual Data Survey Results: A Comprehensive Report From CTIA Analyzing the U.S. Wireless Industry, Year-End 2010 Results*, at 166 (May 2011) (“*CTIA Semi-Annual Report 2010*”).

competitors in 2010 was 90 percent, up from 57 percent just three years earlier.¹⁴ It also represents a substantial increase from 2009, when the Commission determined that more than 74 percent of Americans lived in census blocks with five or more facilities-based wireless competitors.¹⁵ Today, consumers in many U.S. cities can choose from among 14 or more wireless providers.¹⁶

The availability of wireless service is not limited to urban areas. According to the Commission, more than 99 percent of the country's rural population is covered by at least one wireless provider, and approximately 97 percent is covered by at least two providers.¹⁷

As a result of its wide availability and mobility, consumers have enthusiastically embraced wireless technology. According to CTIA, as of mid-year 2011, there were almost 323 million wireless subscriber connections, approximately 22 million more connections than the previous year-end.¹⁸ As a result, the number of wireless subscriber connections in the United States now exceeds the population, which means that consumers are increasingly using more than one wireless device.¹⁹

Wireless usage has increased to more than 2.2 trillion minutes annually.²⁰ In addition to voice communications, wireless messaging services – text messaging and multimedia messaging – continue to grow dramatically. In 2010, U.S. consumers sent more than 240 trillion messages, which was more than twice the volume of messages sent in 2008.²¹

¹⁴ *Fifteenth Report*, 26 FCC Rcd at 9705 ¶ 45 (Table 6).

¹⁵ *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Fourteenth Report, 25 FCC Rcd 11407, 11449 ¶ 45 (2010) (“*Fourteenth Report*”).

¹⁶ CTIA, Innovation and Competition (Feb. 2011) (available at http://files.ctia.org/pdf/020411_-_Innovation_Competition.pdf).

¹⁷ *Fifteenth Report*, 26 FCC Rcd at 9685. The Commission defines a “rural area” to include counties with a population density of 100 people or fewer per square mile. *Id.*, n.20.

¹⁸ CTIA, Wireless Quick Facts, Year End Figures (available at <http://www.ctia.org/advocacy/research/index.cfm/AID/10323>).

¹⁹ Press Release, U.S. Census Bureau Announces 2010 Census Population Counts -- Apportionment Counts Delivered to President (Dec. 21, 2010) (announcing that the 2010 Census reflected the resident population of the United States on April 1, 2010, was 308,745,538) (available at <http://2010.census.gov/news/releases/operations/cb10-cn93.html>).

²⁰ CTIA, Wireless Quick Facts, Year End Figures (available at <http://www.ctia.org/advocacy/research/index.cfm/AID/10323>).

²¹ *See* Chetan Sharma, Chetan Sharma Consulting, USMobile Messaging Market – Growth and Opportunities, at 5 (Jan. 2011).

According to one industry analyst, the average U.S. consumer interacts with almost 650 messages per month – while younger individuals average more than 3200 messages per month.²²

The dramatic surge in wireless usage has been at the expense of wireline carriers, which have experienced a significant decrease in voice traffic on their networks.²³ For example, according to the National Exchange Carrier Association, the minutes of use for all reporting companies declined from 379.3 billion in 2006 to 240 billion minutes in 2010, a decrease of nearly 37 percent.²⁴

Not only are customers opting to use a wireless devices to communicate rather than a wireline telephone, they increasingly are going without a wireline telephone altogether. By middle of 2011, nearly 32 percent of U.S. households had only a wireless phone—up from a mere 8.4 percent wireless-only households at the end of 2005.²⁵ Furthermore, the percentage of wireless-only households has been steadily increasing. According to the National Health Interview Survey (“NHIS”), which is the most widely cited source for data on the ownership and use of wireless telephones, “the 3.1-percentage-point increase from the first 6 months of 2010 was the largest 6-month increase observed since NHIS began collecting data on wireless-only households in 2003.”²⁶ And in its most recent report, the CDC noted, that while the growth of wireless-only households in the first half of 2010 was not quite as large as in its previous survey, “it is similar in size to the increases observed for the previous two 6-month periods.”²⁷

That wireless technology will continue to displace wireline telephone service is evidenced by the fact that young people increasingly do not see the need to have a wireline telephone. For example, the NHIS reports that 30.2 percent of all adults lived in households with wireless-only voice connections as of the first half of 2011. However,

²² *Id.* at 6.

²³ See *CDC 2010 Wireless Substitution Study* at 1 (noting that “nearly one of every six American homes (15.7%) received all or almost all calls on wireless telephones despite having a landline”); see also Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, Table 10.2, at 10-4 (Sept. 2010) (reporting that the largest ILECs handled 235.4 billion local calls and 69.6 billion toll calls in 2007, as compared to 536.5 billion and 106 billion, respectively, in 2000).

²⁴ National Exchange Carrier Association Submission of 2006-2010 Industry Minutes of Use Data for all Companies Reporting (available at <http://transition.fcc.gov/wcb/iatd/neca.html>).

²⁵ *CDC 2011 Wireless Substitution Study*, at 2.

²⁶ *Id.*

²⁷ *Id.*

for young adults aged 25 to 29, the number living in wireless-only households is much higher, exceeding 58 percent.²⁸

Competition from Wireline Services

Even among the dwindling number of households that continue to rely upon wireline telephone service, ILECs are subject to fierce competition from a host of service providers. In addition to competition from conventional CLECs, ILECs also compete with cable and other interconnected VoIP service providers. Together, these competitive services represent an increasing portion of the overall landline marketplace.

According to the Commission's data, there were 148.6 million end user switched access lines and VoIP subscriptions in the United States as of December 2010, down from 175.2 million five years earlier.²⁹ Over that same time period, from December 2005 to December 2010, the ILEC share of end-user voice subscriptions decreased from approximately 82 percent to less than 66 percent.³⁰ Much of this dynamic has been driven by the rise of interconnected VoIP services. Indeed, in its most recent *Local Competition Report*, the Commission reported that interconnected VoIP subscriptions increased by 22 percent (from 26 million to 32 million), while retail switched access lines decreased by 8 percent (from 127 million to 117 million).³¹

The largest providers of interconnected VoIP are cable companies. As of September 2011, the National Cable & Telecommunications Association reported that there were more than 25 million cable phone subscribers.³² The number of cable phone subscribers has grown exponentially, from approximately 9.5 million in 2006.³³ In fact, Comcast is the third largest telephone provider in the United States.³⁴ Comcast had 8.6 million

²⁸ *Id.*

²⁹ *Local Telephone Competition Report* at 12, Table 1.

³⁰ *Id.*

³¹ *Id.* at 2, Figure 1.

³² National Cable and Telecommunications Association, Operating Metrics (September 2011), available at <http://www.ncta.com/StatsGroup/OperatingMetric.aspx>. While most cable telephony is offered via VoIP, some cable providers continue to offer some of their subscribers switched voice services as well.

³³ National Cable and Telecommunications Association, Cable Phone Customers 1998-2010, available at <http://www.ncta.com/Stats/CablePhoneSubscribers.aspx>.

³⁴ Press Release, *Comcast Now the Third Largest Residential Phone Services Provider in the U.S.* (March 11, 2009) (available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=844>).

digital voice customers at the end of 2010, an increase of almost one million voice customers from the year before.³⁵

Comcast is not the only cable operator competing successfully in the voice marketplace. For example, as of December 31, 2010, Time Warner Cable and Cox had approximately 4.4 million and 2 million residential digital voice customers, respectively.³⁶ With more than 93 percent of U.S. homes passed by the cable high-speed broadband infrastructure, cable operators are well positioned to continue to grow their voice customer base at the expense of ILECs.

At the NCTA data suggest, cable voice services have continued to grow since the end of 2010. Further, cable is not the only source of VoIP competition faced by ILECs. For example, interconnected VoIP service provider Vonage had 2.4 million subscriber lines as of December 31, 2010.³⁷

Other Competition

Broadband has facilitated a host of other competitive choices for consumers interested in an alternative to wireline telephone service. For example, an increasing number of over-the-top VoIP applications can provide some or all of the functionality of traditional phone services using any broadband connection. Skype, the most well-known of such services, had 663 million global connected users in 2010.³⁸ Skype offers services that, taken together, allow users to both place calls to and receive calls from PSTN-connected phone numbers. Skype users made 207 billion minutes of voice and video calls in 2010.³⁹

Two of the most popular sites on the Internet are Facebook and Google,⁴⁰ both of which currently offer voice service. Google's service – called Google Voice –uses VoIP technology to link phone numbers together. Specifically, Google Voice enables a user in a web-based application or through an application on a wireless device with the Android

³⁵ Comcast, 2010 Annual Review (Apr. 8, 2011) (available at <http://www.comcast.com/2010annualreview/#!/highlights>).

³⁶ Time Warner Cable, 2010 10-K Annual Report, 4 (filed Feb. 18, 2011); Cox Digital Telephone Fact Sheet (Feb. 2011), available at <http://cox.mediaroom.com/file.php/502/Cox+Digital+Telephone+Fact+Sheet+Feb+2011.doc>.

³⁷ Vonage Holdings Corp., 2010 10-K Annual Report at 26 (filed Feb. 17, 2011).

³⁸ See, e.g., Skype S.A., *SEC Amendment No. 2 To Form S-1 Registration Statement*, at 134 (filed Apr. 13, 2011) (available at www.sec.gov/Archives/edgar/data/1498209/000119312511056174/ds1a.htm#rom83085_12).

³⁹ About Skype, What is Skype, available at <http://about.skype.com/>.

⁴⁰ <http://www ranking.com/>.

or iOS operating system to make calls to the PSTN (as well as calls to other computers or handheld devices). Google Voice users in many countries may make low-cost calls to international phone numbers and currently may also make free calls to the PSTN in North America. Users may select a single U.S. phone number from various area codes, and incoming calls to that number may ring simultaneously any of the user's configured phones. Although Google does not publicly disclose the number of users of Google Voice, the company advised the Commission two years ago that Google Voice had more than 1.4 million users.⁴¹

Google also has included voice functionality as part of its social network service, Google+. This feature allows users of Google+ built-in video calling service to call landline telephone numbers in both the United States and Canada.⁴²

Facebook also offers a video calling service called Facebook Calling. In addition, an application called Bobsled enables Facebook members to place a voice call simply by clicking the name of a Facebook friend in a computer web browser.⁴³

Internet voice applications will become increasingly popular with continued broadband deployments. For example, AT&T, Verizon, and CenturyLink are expected to invest billions to enable advanced offerings of 24 Mbps to 150 Mbps downstream and 896 Kbps to 35 Mbps upstream to 47 percent of U.S. households by the end of 2012.⁴⁴ In addition, each of the major cable operators is deploying DOCSIS 3.0, as well as expanding the reach and speeds of earlier DOCSIS versions, which analysts predict will enable cable

⁴¹ See Arik Hesseldahl, "How Google Voice Is Growing," *Business Week* (Oct. 30, 2009) (available at http://www.businessweek.com/technology/content/oct2009/tc20091030_329665.htm).

⁴² See, e.g., Amar Toor, "Google Brings Free Voice Calls to Hangouts, Really Wants You to Hang Out," *Engadget.com* (Dec. 2, 2011) (available at <http://www.engadget.com/2011/12/02/google-brings-free-voice-calls-to-hangouts-really-wants-you-to/>).

⁴³ See Facebook, "Facebook Video Calling," <http://www.facebook.com/videocalling/>; Kevin C. Tofel, "Look Out Skype! T-Mobile Powers Facebook VoIP" *N.Y. Times.com*, <http://www.nytimes.com/external/gigaom/2011/04/19/19gigaom-look-out-skype-t-mobile-powers-facebook-voip-26584.html> (Apr. 19, 2011).

⁴⁴ See, e.g., CenturyLink, *CenturyLink High-Speed Internet Service Residential Pricing*, http://qwest.centurylink.com/legal/highspeedinternetsubscriberagreement/files/HSI_Consumer_Rate_Card_ENG_v35_080811.pdf; AT&T, *AT&T UVerse High Speed Internet*, <http://www.att.com/u-verse/explore/internetlanding.jsp?fbid=BC5YG3Xz1Bx>; Verizon News Release, *New Verizon FiOS Internet 150/35 Mbps Offer Launches Consumers into Broadband's Fastest Lane* (Nov. 22, 2010), http://www22.verizon.com/investor/newsatglance/news.htm?dID=6166&dDocName=NEWS_1095&xCategory=News; Jessica Reif Cohen et al., Bank of America/Merrill Lynch, *Battle for the Bundle: Best of Times . . . Worst of Times*, at 9, Table 5 (Aug. 23, 2010).

operators to make available broadband offerings of 50 Mbps or more downstream to 89 percent of households served by cable by the end of 2012.⁴⁵ Wireless carriers are deploying 4G networks and services across the U.S., and analysts project that the United States will have more 4G subscribers than the entire Asia-Pacific region by the end of 2014 and that the United States will lead the world in 4G service adoption.⁴⁶

More vibrant broadband networks will only increase the availability of voice applications that compete against an ILEC's voice offerings. Indeed, as the Commission has recognized, it is just a matter of time before voice is "ultimately one of many applications running over fixed and mobile broadband networks."⁴⁷ This competitive reality alone necessitates that the Commission cease subjecting ILECs to antiquated regulations and grant USTelecom's Forbearance Petition.

⁴⁵ See, e.g., *Q2 2011 Comcast Corp Earnings Conference Call – Final*, FD (Fair Disclosure) Wire, Transcript 080311a4141455.755 (Aug. 3, 2011) (statement by Comcast Corp. EVP & President Neil Smit). Comcast's DOCSIS 3.0 upgrades make the company "50 megabits capable in about 90% of [its] footprint," and "105 megabits capable in about 80% of [its] footprint." *Comcast Corp. at Barclays Capital Global Communications, Media, and Technology Conference – Final*, FD (Fair Disclosure) Wire, Transcript 052411a4055044.744 (May 24, 2011) (statement by Comcast Corp. CFO Mike Angelakis); *Q2 2011 Time Warner Cable Earnings Conference Call – Final*, FD (Fair Disclosure) Wire, Transcript 072811a4094690.790 (July 28, 2011) (statement by Time Warner Cable Inc. President and CEO Glenn Britt); See Jessica Reif Cohen, et al., Bank of America/Merrill Lynch, *Battle for the Bundle: Back in Black*, at 7 (Mar. 11, 2011).

⁴⁶ In-Stat, "LTE Subscriber Growth will See a Bumpy Road on Its Path to Nearly 115 Million Subscribers by 2014" (Dec. 2010) (available at <http://www.instat.com/press.asp?ID=2936&sku=IN1004852WBB>); Yankee Group, "2011 Predictions: 4G Fuels the Decade of Disruption" at 2 (Dec. 2010) (available at eumvno.files.wordpress.com/2010/12/2011predictions_dec2010.pdf).

⁴⁷ *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 11-161, ¶ 11 (rel. Nov. 18, 2011).